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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 412 (AT)

5 TIMOTHY SHEA,

6 Defendant.

Trial

7 -----x

8 May 24, 2022

9 8:55 a.m.

10 Before:

11 HON. ANALISA TORRES,

12 District Judge
13 and a Jury

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: ALISON G. MOE

NICOLAS T. ROOS

18 ROBERT B. SOBELMAN

Assistant United States Attorneys

19 MERINGOLO & ASSOCIATES P.C.

20 Attorneys for Defendant

21 BY: JOHN C. MERINGOLO

ANGELICA B. CAPPELLINO

22 CLARA S. KALHOUS

23 Also Present: Sunny Drescher, Paralegal Specialist, USAO

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(Trial resumed; jury not present)

THE COURT: Good morning. Please make your appearances.

MS. MOE: Good morning, your. Honor Alison Moe, Nicholas Roos, and Robert Sobelman for the government. We're joined at counsel table by Sunny Drescher, a paralegal in our office.

MR. MERINGOLO: John Meringolo, Angelica Cappellino, and Clara Kalhous for Mr. Shea who is standing to my right.

THE COURT: Please be seated.

Before we have the jurors come in, I wanted to see if there is anything you wanted to raise.

MS. MOE: Your Honor, from the government, no substantive issues to raise. I did want to raise a brief technical question. Which is just that I saw that your Honor's stand was next to the podium as well. I wanted to make sure if they're double mic'd we won't have a feedback loop.

THE COURT: I'm going to slide the stand over here so that we don't have so much clutter.

MS. MOE: Thank you, your Honor.

THE COURT: Anything from the defense?

MR. MERINGOLO: No, Judge.

THE COURT: Sir, you'll have to wait outside. Thank you.

All right then. When the clock strikes 9, I'm going

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1 to ask the jurors to be brought in.

2 MR. ROOS: Is it okay if we test the video just to
3 make sure the A/V system works?

4 THE COURT: Go ahead.

5 Who is going to open for the prosecution?

6 MS. MOE: I will, your Honor.

7 THE COURT: And for the defense?

8 MR. MERINGOLO: I will, Judge.

9 THE COURT: Apparently, more than the total number of
10 jurors showed up.

11 (Jury present)

12 (A jury of 12 and four alternates is impaneled and
13 sworn)

14 LAW CLERK: Please be seated.

15 THE COURT: Good morning, jurors. Thank you for being
16 on time.

17 Do the attorneys agree that all jurors are present and
18 properly seated?

19 MR. MERINGOLO: Yes, your Honor.

20 MS. MOE: Yes, your Honor.

21 THE COURT: Members of the jury, this case is
22 officially on trial. You are the jurors in the case. As you
23 can see, the jury is composed of 12 members. In addition,
24 there are four alternates. If you are an alternate, you need
25 to pay as close attention as the members of the jury. If for

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1 any reason one of the members of the jury is unable to serve,
2 an alternate will be required to step into the place of that
3 juror. I will now give you some preliminary instructions to
4 guide you in your participation in the trial.

5 The second part of the trial is about to begin. This
6 part is the opening statement by the prosecution. And in the
7 opening statement by the assistant United States attorney,
8 she's required to indicate to you what the government intends
9 to prove by way of evidence to support the charges against the
10 defendant.

11 Once the government's opening statement has been
12 completed, defense counsel has the option to make an opening
13 statement.

14 Now, what attorneys say in an opening statement is not
15 evidence. An opening statement is in a sense a preview of what
16 the attorney expects that the evidence will show.

17 Next, the assistant United States attorney will
18 present a witness, and will ask the witness questions. This is
19 called direct examination. Once the assistant United States
20 attorney completes the questions, the defense counsel will then
21 be given an opportunity to question the witness. This is
22 called cross-examination. This process will continue for each
23 witness the prosecution will present to give testimony. When
24 the government finishes calling all its witnesses, the defense
25 will be given an opportunity to present witnesses. Remember,

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1 the defense need not prove anything; therefore, they don't have
2 to cross-examine the government's witnesses or offer their own
3 witnesses.

4 Once both sides have finished presenting witnesses,
5 the defense and the prosecution will be given an opportunity to
6 make closing remarks. These closing arguments will not be
7 evidence. They are just arguments made by the attorneys to
8 discuss the facts and circumstances in the case, and they
9 should be confined to the evidence and to reasonable inferences
10 that can be drawn from the evidence.

11 So, again, neither opening statements nor closing
12 arguments are evidence, and you should disregard any statement
13 or argument made by the attorneys that is not based on the
14 evidence.

15 After the closing arguments I will give you detailed
16 instructions on the law that relates to this particular case.
17 When I finish my instructions, you will then retire to
18 deliberate to reach a verdict.

19 Now I am going to instruct you on evidence. First,
20 let me tell you what evidence is, basically. Evidence consists
21 of oral testimony under oath, any stipulations of the parties,
22 physical exhibits which during the trial are introduced by
23 either the prosecution or the defense and allowed into
24 evidence. When an exhibit is given to you to examine, you
25 should examine it carefully individually and without comment.

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1 There are two kinds of evidence: Direct and
2 circumstantial. Direct evidence is direct proof of a fact,
3 such as testimony of an eyewitness. Circumstantial evidence is
4 proof of facts from which you may infer or conclude that other
5 facts exist.

6 There is a simple example of circumstantial evidence
7 that is often used in this courthouse. Assume that when you
8 came into the courthouse this morning the sun was shining and
9 it was a nice day. Assume that the courtroom shades were down
10 and you could not look outside. As you were sitting here,
11 someone walked in with an umbrella that was dripping wet. And
12 a few minutes later, another person entered with a wet
13 umbrella. Now, you can't look outside of the courtroom and you
14 cannot see whether or not it is raining so you have no direct
15 evidence of that fact. But on the combination of facts that I
16 have just asked you to assume, it would be reasonable and
17 logical for you to conclude that it had been raining.

18 That is all there is to circumstantial evidence. You
19 infer on the basis of reason and experience and common sense
20 from one established fact, the existence or non-existence of
21 some other fact.

22 Not all circumstantial evidence presents a clear
23 compelling inference. The strength of the inferences arriving
24 from circumstantial evidence is for you to decide. I will give
25 you further instructions on these as well as other matters at

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1 the end of the case. But have in mind that you may consider
2 both kinds of evidence.

3 If you're instructed that some evidence is received
4 for a limited purpose only, you must follow that instruction.
5 Questions asked by either attorney or even myself are not in
6 and of themselves evidence. Only questions coupled with
7 answers are evidence. Therefore, you may not infer any fact
8 from the mere asking of a question.

9 The reason I point this out to you is simple. During
10 the course of the questioning, the prosecution and defense may
11 exercise their right to object to the other's question, to an
12 answer given to a question, or to introduction of an exhibit on
13 the ground that the attorney believes it is somehow legally
14 improper or inadmissible. At that point I will either sustain
15 or overrule the objection. If I sustain an objection to a
16 question, you must disregard it and any answer, if one has been
17 given. You must also draw no inference from the question or
18 from any answer. Nor are you to speculate as to what the
19 witness would have said if permitted to answer. Evidence
20 stricken from the record must be likewise disregarded.
21 Conversely, if I overrule the objection, the question will be
22 allowed or the answer will stand, and it will remain as
23 evidence.

24 When I overrule an objection to any evidence, you must
25 not give such evidence any more weight than if the objection

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1 had not been made.

2 Please bear in mind that my rulings on the law are
3 simply that, and under no circumstance are such rulings to be
4 considered by you as indicating that the Court has an opinion
5 as to the guilt or innocence of the defendant.

6 Under our law, the Court may not and will not
7 entertain any opinion as to the guilt or innocence of the
8 accused. Members of the jury, you and you alone are the sole
9 and exclusive judges of the facts.

10 Now, I want you to understand that objections may come
11 rather quickly, and at times either party may same rude.
12 Please do not resent this or penalize either party for this.
13 Understand that they are just doing their job and this is a
14 part of it.

15 As I stated at the beginning, you are the triers of
16 fact. Therefore, it will you be up to you to decide which
17 witness to believe and which witness not to believe.
18 Furthermore, you will decide how much of every witness's
19 testimony to accept and how much to reject.

20 How do you decide what to believe and what not to
21 believe? Listen to the witnesses and watch them and observe
22 them, then decide whether you believe or disbelieve them in the
23 same way you decide such questions in your ordinary life. Did
24 they know what they were talking about? Were they candid,
25 honest, open and truthful? Do they have a reason to falsify,

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1 exaggerate or distort their testimony? Please use your common
2 sense in evaluating all testimony. All that is asked of you is
3 you apply the same common sense you would apply in your
4 everyday lives to determine who is telling you the truth, who
5 is not, and who is telling you something less than the full
6 truth. Please remember that it is the quality of evidence that
7 controls, not the quantity of evidence or the number of
8 witnesses called by either side.

9 You must decide the case solely on the evidence and
10 the law before you and must not be influenced by any personal
11 likes or dislikes, opinions, prejudices, sympathy, or biases,
12 including unconscious bias. Unconscious or implicit biases are
13 stereotypes, attitudes or preferences that people may
14 consciously reject, but which may be expressed without
15 conscious awareness, control or intention. Like conscious
16 bias, unconscious bias, too, can affect how we evaluate
17 information and make decisions. All of us, no matter how hard
18 we try, tend to look at others and tend to weigh what they have
19 to say through the lens of our own experience and background.
20 We have a tendency to stereotypes others and make assumptions
21 about them. Often we see life and evaluate evidence through a
22 clouded filter that tend to favor those like ourselves. You
23 must do the best you can to put aside such stereotypes. All
24 litigants and witnesses are entitled to a level playing field
25 in which we do the best we can to put aside our stereotypes and

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1 prejudices.

2 You are to be guided solely by the evidence in this
3 case and my instructions on the law. Although you are the sole
4 judges of the facts, my job is to be the sole judge of the law.
5 You must accept the law as I give it to you without any
6 hesitation or reservation. You must accept the law as I give
7 it, even if you privately disagree with me or the law.

8 There are three basic principles of law that apply to
9 this and all criminal cases: The presumption of innocence, the
10 prosecution's burden, and the standard of proof.

11 First is the presumption of innocence. A defendant is
12 presumed innocent, and that presumption remains with the
13 defendant throughout the trial, and is not removed unless and
14 until the defendant's guilt is proven beyond a reasonable
15 doubt. The indictment containing the charges against the
16 defendant is only an accusation, nothing more. It is not proof
17 of guilt or anything else. Therefore, because no evidence has
18 been presented to you as of yet, if you were to deliberate
19 right now, you would have to find the defendant not guilty.

20 Second is the prosecution's burden. The burden of
21 proof is on the government. The defense has no burden, and is
22 not required to do anything to prove his innocence. The
23 defense has the option of just sitting back and doing nothing.
24 Why? Because the defense has no burden of proof, and the
25 defendant is presumed innocent. The defendant is not required

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1 to put on a defense, or call any witnesses, because of the
2 presumption of innocence. If a defendant chooses not to take
3 the stand to testify on his own behalf, you may not draw any
4 negative inference from that. In other words, you could not
5 hold it against the defendant.

6 Third is the standard of proof. The prosecution is
7 required to prove the defendant's guilt beyond a reasonable
8 doubt. This standard does not require the prosecution to prove
9 the defendant's guilt beyond all doubt or to a mathematical
10 certainty. The prosecution does, however, have to prove the
11 defendant's guilt beyond a reasonable doubt. A doubt is not
12 reasonable if, instead of being based on the nature and the
13 quality of evidence or the insufficiency of the evidence, it is
14 based on some guess or whim or speculation unrelated to the
15 evidence.

16 In my final instructions to you at the end of the
17 trial I'll give you detailed instructions on the law as to the
18 specific charges against the defendant. Those instructions are
19 intended to guide you through your deliberations and to enable
20 you to reach your decision.

21 Finally I'm now going to instruct you on how you must
22 conduct yourselves during the trial. You must keep an open
23 mind during the trial. You must keep your eyes open during the
24 trial. You may not ask the witnesses questions. Do not
25 converse either among yourselves or with anyone else about

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1 anything related to this case. You may tell the people with
2 whom you live and your employer that you are a juror and give
3 them information about when you will be required to be in
4 court. But, you may not talk with them or anyone else about
5 anything related to this case.

6 Do not at any time during the trial request, accept,
7 agree to accept or discuss with any person the receipt or
8 acceptance of any payment or benefit in return for supplying
9 information about the trial. You must promptly report directly
10 to me any incident within your knowledge involving an attempt
11 by any person to improperly influence you or any member of the
12 jury.

13 Do not visit or view any place that is mentioned
14 during the trial which may have something to do with where the
15 crimes were allegedly committed. And you must not use internet
16 maps or Google Earth or any other program or device to search
17 for and view any location discussed in the testimony.

18 Do not read, view, or listen to any accounts or
19 discussions of the case reported by newspapers, television,
20 radio, the internet or any other news media. Do not attempt to
21 research any fact, issue or law related to this case, whether
22 by discussion with others, by research in a library, or on the
23 internet, or by any other means or source.

24 In this age of instant electronic communication and
25 research, I want to emphasize that in addition to not

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1 conversing face to face with anyone about this case, you must
2 not communicate with anyone about the case by any other means,
3 including telephone, text messages, e-mail, internet, chat or
4 chatrooms, blogs or social websites such as Facebook and
5 Twitter. You must not provide any information about the case
6 to anyone by any means whatsoever. And that includes the
7 posting of information about the case or what you are doing in
8 the case on any device or internet site including blogs,
9 chatrooms, social websites or any other means. You must also
10 not Google or otherwise search for any information about the
11 case or the law that applies to the case or the people involved
12 in the case, including the defendant, the witnesses, the
13 lawyers and myself.

14 Now, ladies and gentlemen, I want you to understand
15 why these rules are so important. Our law does not permit
16 jurors to converse with anyone else about the case or permit
17 anyone to talk to them about the case because only jurors are
18 authorized to render a verdict. Only you have been found to be
19 fair and only you have promised to be fair. No one else has
20 been so qualified. Our law also does not permit jurors to
21 converse among themselves about the case until the Court tells
22 them to begin deliberations, because premature discussions can
23 lead to premature final decisions.

24 Our law also does not permit you to visit any place
25 discussed in the testimony. Finally, our law requires that you

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1 not read or listen to any new accounts of the case and that you
2 not attempt to research any fact, issue or law related to the
3 case.

4 Your decision must be based solely on the testimony
5 and other evidence presented in this courtroom. It would not
6 be fair to the parties for you to base your decision on some
7 reporter's view or opinion or upon information you acquire
8 outside of the courtroom. These rules are designed to help
9 guarantee a fair trial, and our law accordingly sets forth
10 serious consequences if the rules are not followed.

11 I trust you understand and appreciate the importance
12 of following these rules, and in accord with your oath and
13 promise, I know you will do so.

14 During the trial, it may be necessary for me to confer
15 with the lawyers out of your hearing with regard to questions
16 of law or procedure. On some occasions you may be excused from
17 the courtroom for that reason. I will try to limit these
18 interruptions as much as possible. But you should remember the
19 importance of the matter you are here to determine and should
20 be patient, even though the case may seem to go slowly.

21 Finally, I permit jurors to take notes, but you don't
22 have to take notes. Notes are just an aid to your own
23 recollection. The court reporters in this case report
24 everything that is said in the courtroom, and any portion of
25 the testimony can be read back to you here in open court during

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Opening - Ms. Moe

1 your deliberations.

2 If you do take notes, be aware that note taking may
3 distract you from something important that's happening on the
4 witness stand. Whether or not you take notes, rely on your own
5 recollection and don't be influenced by the fact that another
6 juror has taken notes. One moment.

7 I told you that you are to report any attempt by
8 anyone to improperly influence you. Lawyers are not permitted
9 to have any contact with you, other than what takes place on
10 the record during the course of this trial. So, if you see an
11 attorney, for example, in the hallway or outside, and the
12 lawyer doesn't say hello or even acknowledge your presence,
13 please don't think that the attorney is being rude. Attorneys
14 are simply not permitted to have any type of contact with you.

15 Now, Assistant United States Attorney Alison Moe will
16 make her opening statement.

17 MS. MOE: Timothy Shea and his business partner
18 started a fundraiser online. They raised money to build a wall
19 along the southern border of the United States. Hundreds of
20 thousands of people across the country donated. They raised
21 millions of dollars.

22 Now, what donors didn't know, but what you're going to
23 learn at this trial, is that Timothy Shea and his partner were
24 working behind the scenes to steal money for themselves.
25 Hundreds of thousands of dollars of donors' money went into the

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Opening - Ms. Moe

1 pockets of that man, Timothy Shea, the defendant.

2 Together with his partners in crime, they looted
3 hundreds of thousands of dollars of donors' money, and created
4 fake documents to cover their tracks.

5 That's why we're here today.

6 Now, this opening statement is our opportunity to give
7 you a roadmap of the evidence in this case. I'm going to do
8 that in three parts. First, I want to tell you about what I
9 expect the evidence at this trial will show. Second, I'm going
10 to briefly describe the charges in this case. And third, I'll
11 explain to you how we will prove beyond a reasonable doubt that
12 the defendant is guilty.

13 So, first, what will the evidence show?

14 You're going to learn that in December 2018, the
15 defendant and his wife had a conversation with their business
16 partner, a man named Brian Kolfage. Kolfage was a veteran who
17 had become an internet celebrity. Together, they created a
18 fundraiser on GoFundMe.com.

19 Now, you are going to learn that GoFundMe is a website
20 where people raise money online. Basically, you post your
21 fundraiser on the website, people learn about it online, and
22 then you can raise money through donations through the website.
23 And their GoFundMe fundraiser was called We Build the Wall.

24 Now, at the time that the defendant and his partners
25 started this fundraiser, there was a lot of talk about building

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1 a wall along the southern border. Politicians were talking
2 about whether to build a wall and how to pay for it. When the
3 defendant and his partners first started this fundraiser, they
4 told donors that they were raising money to give to the
5 government so that the government could build a wall.

6 From the very beginning of the fundraiser, Kolfage was
7 the public face, while the defendant and his wife worked behind
8 the scenes. And in just a few days, millions of dollars came
9 in, mostly small donations, from hundreds of thousands of
10 people across the country, including folks right here in the
11 Southern District of New York.

12 But the government couldn't accept money from an
13 online fundraiser. And the defendant and the people he was
14 working with didn't want to give back millions of dollars to
15 the donors. So they came up with a new plan. They set up a
16 nonprofit organization called We Build the Wall, and they told
17 donors that the money they had collected would now go to that
18 organization, and be used to build a wall along the southern
19 border.

20 Now, let me just pause here for a moment. This case
21 is not about whether there should be a wall along the southern
22 border of the United States. That is not a question you are
23 going to be asked to answer at this trial. And this case isn't
24 about whether they did build a wall, and this case isn't about
25 whether the defendant did work for We Build the Wall. You are

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1 going to learn at this trial that they did build segments of a
2 wall along the southern border, and you are going to learn that
3 the defendant did work for We Build the Wall.

4 But let me be clear: None of that made it okay for
5 the defendant to steal money from the organization at the same
6 time. But that's exactly what he did.

7 Now, after the defendant and his partners set up the
8 We Build the Wall organization, some donors were suspicious.
9 It's one thing to donate money to the government, but it was
10 another thing to donate to this new organization that was
11 untested and had no track record. So people started asking
12 questions. How was We Build the Wall actually going to spend
13 the donors' money? And how could they be sure that the people
14 behind We Build the Wall wouldn't take some of that money for
15 themselves?

16 So, in order to keep the donations coming in, in order
17 to keep that money machine going, the defendant and his
18 partners promised on the GoFundMe website and on the website
19 for We Build the Wall that 100 percent of the money would go to
20 building the wall, and that not a single penny would go to its
21 president, Kolfage. Those same promises were repeated in
22 social media, on posts, and in e-mails that went to donors.

23 But the defendant and his partners wanted some that
24 was money for themselves. You are going to see e-mails and
25 text messages that the defendant sent showing that, all along,

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1 he and his partners were looking for an angle to take a cut of
2 the money.

3 So they made a secret agreement. Kolfage would
4 secretly be paid \$100,000 out of the donated money, and then
5 he'd get about \$20,000 every month after that. The defendant,
6 his wife, and their partners in crime, they would also get a
7 cut of the money. But of course, they couldn't just write big
8 checks to themselves from We Build the Wall. They didn't want
9 to get caught stealing. So they figured out a way to secretly
10 steal some of the money that had been donated.

11 Here's how they did it. The defendant submitted fake
12 invoices and payment requests to We Build the Wall. The
13 defendant would take a bill for real work and mark it up to a
14 higher number, and sometimes he just doubled it. And then he'd
15 request that We Build the Wall reimburse him for expenses that
16 weren't real.

17 Now, in order to hide what was going on, the defendant
18 created a new company, it was a shell company, a company that
19 existed only on paper. He gave the company a vague sounding
20 name, Ranch Property Marketing and Management. It had a simple
21 website to make it look legitimate, even though it wasn't. And
22 then the defendant billed We Build the Wall from the shell
23 company.

24 The defendant was able to pull off this scam because
25 his partners in crime had access to the bank accounts.

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1 Kolfage, his business partner, was the president, and they made
2 the defendant's wife the treasurer so that she was in charge of
3 We Build the Wall's finances. But that was just half of the
4 scheme. Once the defendant got paid, he kept his cut of the
5 money, and he kicked back money to Kolfage. The defendant was
6 making illegal kickback payments to Kolfage, the president, his
7 partner, because they were stealing this money together and
8 they both got a cut of the money.

9 And the defendant put down fake reasons for those
10 payments, too. The checks from the defendant to Kolfage said
11 that the payments were for things like social media, or making
12 Facebook pages. But none of that was real. Over and over the
13 defendant funneled money through his shell company. The
14 defendant submitted a fraudulent invoice, then he got a payment
15 from We Build the Wall, then he kicked back money to Kolfage.

16 Invoice, payment, kickback. Again and again.

17 That's how the defendant laundered money to hide the
18 fraud scheme. That's how the defendant stole hundreds of
19 thousands of dollars.

20 Now, you're going to learn that there were other
21 members of this fraud scheme and they were also stealing money
22 from We Build the Wall and paying kickbacks, too. Some months,
23 the money would be laundered through the defendant's shell
24 corporation. And in other months, other partners in this
25 scheme would launder money by passing it through the bank

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1 accounts of other people. They were all playing different
2 roles in the same scam. It was a coordinated scheme to steal
3 money from the organization and pay kickbacks.

4 Now, when the defendant took money from We Build the
5 Wall and paid kickbacks to Kolfage, the defendant defrauded
6 donors to We Build the Wall who had been promised that Kolfage
7 wouldn't take a penny. That 100 percent of the money would go
8 to building the wall. And We Build the Wall was a victim, too.
9 Because the defendant was stealing money from the organization
10 to pay illegal kickbacks. He and his partners betrayed the
11 loyalty that Kolfage owed to We Build the Wall as its
12 president. They were committing fraud, plain and simple.

13 Now, you're going to learn that in October of 2019,
14 the defendant found out that there was a criminal investigation
15 relating to We Build the Wall. He learned that federal
16 investigators right here in Manhattan had asked their bank for
17 copies of We Build the Wall's bank records. Now, that
18 investigation was supposed to be secret. By law, the bank
19 wasn't allowed to tell anyone about the investigation. But a
20 bank employee made a mistake, and he told We Build the Wall's
21 lawyer about the request. And when that happened, word
22 traveled fast right back to the defendant.

23 When the defendant learned about the criminal
24 investigation, he was worried. He knew what he was doing was
25 wrong and illegal, because, at this point, he had stolen

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1 hundreds of thousands of dollars from We Build the Wall and
2 laundered that money through a shell corporation. He knew that
3 a day like today might be coming.

4 So when he found out about the investigation, what did
5 he do? He doubled down on all of the lies. He signed a phony
6 document to create a cover story and obstruct the
7 investigation. Just days after learning about the
8 investigation, the defendant signed a fake contract to make it
9 look like all of the illegal kickback payments he had been
10 paying were legitimate. You are going to learn that that
11 contract was backdated. It was made to look like it was
12 actually signed six months earlier, before the defendant knew
13 about the criminal investigation. But the document was fake,
14 and he got caught.

15 That is what the evidence at this trial will show.
16 For his role in this scheme, the defendant is charged in three
17 counts. First, he's charged with participating in a conspiracy
18 to commit wire fraud. You are going to learn that a conspiracy
19 just means an agreement with other people to do something
20 illegal. And the evidence will show that this was an agreement
21 between the defendant, Kolfage, and his partners in crime to
22 commit fraud on the donors to We Build the Wall, and to commit
23 fraud on We Build the Wall itself, by stealing money and using
24 some of that money to pay illegal kickbacks to Kolfage.

25 Second, the defendant is charged with participating in

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1 a conspiracy to launder money. The evidence will show that the
2 defendant agreed with his partners to launder the money that
3 they stole from We Build the Wall through the defendant's shell
4 company in order to hide their fraud scheme.

5 And third, the defendant is charged with using a fake
6 document to try to cover up his crimes and fool federal
7 investigators.

8 Now, how will we prove to you that the defendant
9 committed the crimes he's charged with? You are going to see
10 the defendant's own words. You'll see e-mails and text
11 messages between the defendant and Kolfage. You'll see the
12 messages in which they hatch the plan for stealing the money
13 and paying illegal kickbacks.

14 You'll see them talking about keeping the payments
15 secret and joking about going to prison if they didn't cover up
16 their crimes.

17 You are going to see the promises that the defendant's
18 partners made in order to get the donors to make donations.
19 The lies that donors were told. You'll also hear from donors.
20 People who gave money. Victims. They'll tell you that they
21 felt comfortable donating to We Build the Wall because there
22 were assurances that all of the money was going to go to
23 building a wall.

24 And you are going to see how the defendant tried to
25 conceal the money he stole from We Build the Wall. At this

M5o3shel

Opening - Ms. Moe

1 trial, you will follow the stolen money, and see where it went:
2 To the defendant and his partners. You'll see that hundreds of
3 thousands of dollars were being laundered by the defendant
4 through his shell company. You'll see that the defendant was
5 taking money for himself, and also paying illegal kickbacks to
6 Kolfage.

7 And finally, you'll see the fake documents the
8 defendant and his partners made to cover up their scheme.
9 Inflated invoices, backdated documents, and checks and bank
10 documents listing fake reasons for the payments.

11 You are going to see a lot of evidence and hear from a
12 number of witnesses at this trial. The evidence will come in
13 piece by piece, and it won't always come in perfect
14 chronological order. But by the end of the trial, you are
15 going to see how it all fits together, how it proves beyond a
16 reasonable doubt that the defendant is guilty.

17 Now, I am going to sit down in just a moment. But
18 before I do, I want to ask you to do three things at this
19 trial. First, please pay close attention to the evidence. And
20 second, please listen carefully to Judge Torres and her
21 instructions on the law. And third, as you consider the
22 evidence at this trial, use your common sense. The same common
23 sense you use every day in your own lives.

24 Now if you do those three things, the defendant will
25 get a fair trial, and the government will get a fair trial.

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Opening - Mr. Meringolo

1 And at the end of the trial, you will reach the only verdict
2 consistent with the evidence, the law, and your common sense.
3 The defendant is guilty.

4 THE COURT: Now, you will hear the opening statement
5 of the defense by Mr. John Meringolo.

6 MR. MERINGOLO: Good morning, ladies and gentlemen.
7 My name is John Meringolo. Along with Clara Kalhous, Angelica
8 Cappellino, we represent Timothy Shea.

9 We all have roles here in the courtroom. The
10 prosecutors are prosecuting Mr. Shea, I'm defending him, and
11 Judge Torres is the guardian of the law.

12 I'm not going to sit here and read. I didn't prepare
13 a script for you, ladies and gentlemen, but I've taken notes on
14 what the prosecutor said and I'm going to try to rebut to see
15 if I can if I can rebut to help Tim Shea. Okay?

16 So, I want you to hear, I come here to tell you the
17 truth. That's what I am going to do. Okay? The truth.

18 What's the truth? Brian Kolfage, he's an internet
19 celebrity. Right? That's what the government said. They just
20 said he is an internet celebrity. Brian Kolfage is a veteran
21 who got blown up by a rocket. Okay. A rocket. No legs, no
22 arm, and another arm sewed back on. Okay. I don't think he
23 wanted to become an internet celebrity. Okay. So let's just
24 start there.

25 There is another side to this story. I'm not, after

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Opening - Mr. Meringolo

1 the prosecutor gets up here and talks, I am not going to run
2 out because that's -- we're guilty.

3 They said a few other things here and I'm going to go
4 through them one by one, and the evidence is going to show, the
5 government came up here and said it was a shell company.

6 Right. A shell company. Ranch Property Management was a shell
7 company. Okay. That's a charged word. It is actually not a
8 legal word, it is not term of art, it is some prejudicial word.
9 Maybe some of you said why didn't Meringolo object to that?
10 You know what? I wanted it in evidence. I want you all,
11 ladies and gentlemen of the jury, to hear what the government
12 has said. It is a shell company. Okay.

13 So what's a shell company? A shell company is
14 something, and we know, we're New Yorkers. A shell company is
15 something that you just open, you push money through, you push
16 money out, you give what the government said in their opening,
17 a kickback. But maybe there is evidence of work. Maybe Tim
18 Shea worked. Okay. Maybe Tim Shea and his friend and business
19 partner for a long time, Brian Kolfage, decided to do this We
20 Build the Wall and build a wall on the southern border. And
21 whatever your political views, we're New Yorkers, maybe we
22 don't like the wall. Okay. But that has nothing to do with
23 this case. okay. That has nothing to do with this case.

24 So this internet celebrity who has no legs and no arm
25 and another arm tied back to his -- they do a GoFundMe. Okay

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Opening - Mr. Meringolo

1 they believe, and they believe in legal immigration, but they
2 believe in the wall. That's what they believe. Maybe we don't
3 believe it, but that's what they believe. Okay.

4 And there is nothing wrong with us all having
5 different views in this world. That's what makes us great.
6 That's what makes the country great when you really get down to
7 it.

8 So the evidence will show, they raised \$25 million
9 with this GoFundMe. You know what they wanted to do? They
10 went to Washington, D.C., right and they tried to dump -- drop
11 the check right in the government. And the government said you
12 know what, we don't want that check.

13 So they raised all this money through GoFundMe, they
14 didn't have any intention, there is no specific intent, the
15 government can't produce any evidence whatsoever that there was
16 specific intent when they raised all this money and they
17 brought that check to Washington, and they said we want to give
18 this check to the administration, and let's get out of here,
19 let's go do our social media companies, what we've been doing
20 for the last few years. That's what the evidence will show.
21 So where is the specific intent when you want to drop the
22 check? There is none.

23 Now, they meet this gentleman by the name of Steve
24 Bannon. Brian -- what's his name -- Brian Kolfage meets Steve
25 Bannon they said we should do a charity. We should do a

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Opening - Mr. Meringolo

1 charity or a nonprofit. Forgive me, because I am going to mess
2 up a little bit. It is just who I am. I'm not scripted. I am
3 just going to try to talk to you the way I know how to talk.

4 So, there is, they open this nonprofit, and what you
5 have to do when you have a GoFundMe, is they have, the people
6 who donated that thought it was going to go to the wall, and
7 they are going to drop the check, they had to opt in. So the
8 \$25 million that they got, they had to opt back in to say okay,
9 it's okay for the charity. Right. So they opted in and they
10 opened this nonprofit in approximately January.

11 And one gentleman, I would love you guys if you would
12 write his name down, is attorney Richard Kaye. Okay. I want
13 you to remember that name, attorney Richard Kaye. Now he is a
14 lawyer at -- what's the law firm. Barnes & Thornburg. Okay.
15 He's the lawyer for the charity, for the nonprofit at Barnes &
16 Thornburg.

17 Just to put Barnes & Thornburg in perspective, it is a
18 major law firm. Okay. It is not some guy like me who works
19 out of my basement. They wouldn't even let me go in the door.
20 Okay. So he's the counsel. And now they have this nonprofit
21 with Steve Bannon and Kris Kobach and Brian Kolfage and my
22 client's wife Amanda Shea. They said we are going to build the
23 wall. Right.

24 So we went from, ladies and gentlemen, do the
25 GoFundMe, dropping the check, to say we are going to do a

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Opening - Mr. Meringolo

1 startup and we're going to build the wall. Okay.

2 Now, if anyone's working, like Tim Shea's working,
3 right, at the southern border, you should get paid, right?
4 He's not a board of director. He was getting paid and he did
5 work and the evidence will show he did work. That it's not one
6 of these shell companies.

7 And I submit to you that if it's not a shell company,
8 they've not proven their case beyond a reasonable doubt and
9 that he's not guilty.

10 Okay. So Tim Shea and everybody, they actually build
11 a wall. They build two walls. And the evidence will show in
12 this case that one wall that they built in New Mexico -- New
13 Mexico. One wall they built in New Mexico, the Army Corps of
14 Engineers said it couldn't be done, or if it was going to be
15 done, it would cost \$41 million and take two years.

16 So Tim's part of the team that builds this wall,
17 whether you like it or not, they build it in 17 days for \$6
18 million or \$8 million.

19 So they build a wall with the money. If we let our
20 government do it, it would have cost 30 more million or close
21 to 30 more million and took another two years. So maybe they
22 should hire them to do our roads in New York.

23 So this wasn't something where we devised a shell, and
24 the evidence will show that we built that wall and we built
25 another wall. And Ranch Property Management, not a shell

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Opening - Mr. Meringolo

1 company. Why is it called Ranch Property Management? Because
2 all the properties on the southern border are ranch properties.
3 And part of Tim's job, because he is a real estate agent by
4 trade, and he was, they just figured they were going to do this
5 thing after they didn't accept the check, the government, is
6 finding property. And the evidence is going to show that Tim
7 actually tried to find property. That was one of his jobs that
8 went through ranch property, ladies and gentlemen. Not a shell
9 company like the government said.

10 Another one of his jobs was he, and through Ranch
11 Property, took a lead on the security, a lead of the security.
12 And what do you mean by security. Yes, security of events at
13 the southern border, security -- evidence will show security of
14 events in Detroit, security of events in Cincinnati.

15 So, shell company, if it is not a shell company like
16 the government just represented to you, that's one of the
17 elements that they are going to use, I respectfully submit you
18 should vote not guilty.

19 So in addition to that, not only did he try to find
20 land that he provided security, and let's digress. I haven't
21 been to the southern border. The southern border is dangerous.
22 Okay. Like it or not, the southern border is dangerous. I
23 believe we'll have Kris Kobach on the stand, and the evidence
24 will show that there is human trafficking, that there is drug
25 trades, I mean we all know the drug trades, and a lot of bad

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Opening - Mr. Meringolo

1 things happen at the southern border. And that's probably why
2 they wanted to build these particular walls. And we'll go into
3 one wall, why it was built with Mr. Kobach when he's on the
4 stand.

5 So, whatever your political views are, this isn't a
6 shell company.

7 In addition to that, Mr. Shea did social media. And
8 that's what him and his wife do. That's what they do, partly.
9 He is a real estate broker, but they partly do social media and
10 they've done social media, which is another company I want you
11 to guys to remember is called Freedom Daily. Now, Freedom
12 Daily, the evidence will show, is Brian Kolfage's company. And
13 you know what, just wait for some of these cross-examinations.
14 That's the one thing I ask you guys to do is to keep in mind --
15 I don't want to just be up here for an hour and talk about the
16 whole case. But just keep in mind of some of the
17 cross-examinations.

18 Now, these kickbacks, did Tim earn the money at Ranch
19 Properties? Yes. Did he give it back to Brian? Some of it.
20 And why did he give it back? The government is saying they
21 gave it back because of this phony deal, phony contract. That
22 We Build the Wall got a subpoena from the government here.
23 Okay. So when they did get a subpoena, who did they call?
24 Richard Kaye.

25 Now, I am hoping the evidence will show through

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Opening - Mr. Meringolo

1 metadata that the contract that the government just said was
2 fake comes from Richard Kaye's e-mail, the lawyer from Barnes &
3 Thornburg, the big law firm that We Build the Wall paid
4 \$700,000 collectively to, and the guy was answering the
5 subpoena.

6 Now, what's wrong if you got a subpoena, and you
7 called your lawyer. What's wrong if you got a subpoena and
8 everybody called each other.

9 So the government's going to introduce a chart on
10 October 10 and say, Bannon called Richard Kaye, Tim called his
11 wife. Respectfully, submitted Tim called his wife every day.
12 Okay. So there is nothing wrong with that.

13 If you get a lawsuit, you get a subpoena, you are
14 going to call a lawyer. You are going to call the people that
15 are going to represent you. You are going to call people
16 within the company. Okay.

17 So, the other things that the government was saying
18 that it's not legitimate. They also said that there were
19 invoice payments, right. That they marked, that Tim marked up
20 invoice payments.

21 So the evidence will show that Tim had a drone. They
22 wanted to do a video, we'll see the video I hope. We'll see,
23 the evidence may show the video itself and they needed drone
24 footage. Believe it or not, I hope some of you know drone
25 footage is very expensive. Especially getting somebody to go

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Opening - Mr. Meringolo

1 to the southern border.

2 So Tim sent the invoice and Tim got paid. And when
3 Tim sent an invoice for security, and he marked it up, he got
4 paid. It's okay to get paid for work. You will never see Tim
5 Shea ever say I don't want to get paid for work that I'm
6 working on the southern border, and how violent it is. Okay.

7 Now we have these text messages, and I think the
8 government, they said on one of the text messages on their
9 opening, they said ladies and gentlemen, they said, this was
10 the text message that the government said. Now, while I try to
11 find this, has anybody ever misinterpreted a text message or
12 had a loved one misinterpret a text message from you or a
13 friend misinterpret a text message from you? Has that ever
14 happened before? Okay.

15 So here's what the government said. There is going to
16 be a text message, right. Like the shell company. There is
17 going to be a text message where Tim Shea says, and this is --
18 I'm just reading this one, one text message to Brian.

19 We need a solid -- I don't curse -- F'ing plan
20 otherwise we go to prison.

21 Now that's what the government said on their opening.
22 Let me tell you, we need a solid plan or we're going to go to
23 prison. Am I just going to leave now and that's the end of the
24 case? Absolutely not. You know what? Because I am going to
25 read the whole text message. I am going to read what the text

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Opening - Mr. Meringolo

1 message and the other 30 things that were before it, what did
2 it mean.

3 So they are talking about the wall. They're talking
4 about that they need a Spanish interpreter. And then right
5 above where we need a solid plan or we're all going to prison,
6 they said, you know, they're scared, the evidence will show.
7 They're scared of Mexican cartels. And then Mr. Kolfage will
8 say the NM people -- meaning New Mexican people -- we got it
9 locked and loaded. Maybe we offer security. Tim says maybe we
10 offer security to them and then they don't care, the evidence
11 will show, we're offering them mega money. Erik Prince people.

12 Now, Erik Prince, whether you know him or not -- I
13 didn't know him until a few days ago -- he's a multibillionaire
14 guy who does a lot of work around the whole world. Whether it
15 be he is a former Navy SEAL, he is a guy that has money I can't
16 even imagine.

17 And then they go, and Brian Kolfage says they were
18 stupid. Meaning the billionaire. They say Trump is building
19 the wall. Okay. Brian Kolfage says they think Trump is
20 building the wall, and Brian Kolfage says Kris even showed them
21 where he's not building in the area. And Tim Shea uses a curse
22 word, F-U-C-K, and then says we got AZ people. That's Arizona
23 people, referring to the wall. And then Brian says we are
24 good. And then Tim says, we need a solid F'ing plan otherwise
25 we go to prison.

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Opening - Mr. Meringolo

1 Now what does that have to do with the shell, with the
2 kickback, when they're talking about contracting. So anyone
3 who has ever done contracting, anyone who has ever worked in
4 construction, you know you need permits, you know you need
5 concrete, you know you need steel, and that's what the evidence
6 will show. We're New Yorkers. What happens when there's no
7 permits and someone gets hurt or the concrete is not laid
8 right. What happens? You get hurt, you go to jail. There are
9 a lot of people around.

10 So where they are saying, oh, let me show the kickback
11 or we're going to go to jail. Or are we talking about
12 construction.

13 I can go over -- and I will go over -- all the text
14 messages. But be careful when we have a text message from
15 March on the chart and then the next text message is over here
16 from April and then they want to pull a wire transfer from May.
17 Then they give you a nice chart and say, look, we're all going
18 to jail. We got the money, it is kicking back.

19 I submit to you, ladies and gentlemen, that's the
20 evidence that's going to be presented to you. And I am going
21 to take this all apart, and I ask you to keep an open mind. I
22 will take this all apart on summation. And the only verdict
23 that you are going to be is not guilty. If they don't prove
24 every element of every single crime beyond a reasonable doubt.
25 And Judge Torres will give you what beyond a reasonable doubt

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Opening - Mr. Meringolo

1 is.

2 So, to sum up here, when we have -- I didn't do
3 anything I prepared. But, when you have the government saying
4 these things, and pulling five e-mails, six e-mails out of
5 125,000, and a few text messages and putting it in a chart and
6 saying this is gospel, you have to read the whole thing. Okay.

7 And listen, if they prove the case beyond a reasonable
8 doubt, then vote him guilty. Okay. If the evidence -- if
9 somebody gets up there on this stand, ladies and gentlemen, and
10 says, Tim Shea conspired with me or I know he conspired with
11 someone else to get kickbacks, convict him. Okay.

12 Another thing that the evidence may show, I'm not
13 100 percent sure, it may show that Tim was indicted 20 months
14 ago and we've been waiting for you guys for 20 months. And the
15 evidence will show Tim was indicted in August of 2020. I don't
16 know if this is 100 percent, don't hold me to it. The evidence
17 may show every single witness that's going to get on this stand
18 and talk about this case was never interviewed before the
19 indictment. It was interviewed after the indictment. Okay.
20 Take that what you will. Okay. I can't really make arguments
21 on that.

22 So, in addition to this, you have, oh, the
23 government's going to say that Mr. Shea -- they didn't say this
24 in their opening, the government will say Mr. Shea took a loan
25 for another company he had for \$34,000 for it's called Winning

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Opening - Mr. Meringolo

1 Energy. Right. So, not a shell company, clearly not a shell
2 company. My father came to see me so I won't put a hat on
3 inside. They have a hat the evidence may show. They have
4 drinks the evidence may show. Okay. Maybe he bought drinks
5 and gave them away. I think 30, 40,000 drinks. They are going
6 to say that the, they are going to say, the government, that
7 that was wrong that he took a loan.

8 But ladies and gentlemen, when you take a loan, and
9 they took a loan from the nonprofit, and the loan was a 10
10 percent return, not bad in these days, right, 10 percent we'd
11 all take it probably. 10 percent return. What happens when
12 you take a loan? What do you do when you take a loan? You pay
13 a loan back. Right. You paying this loan back with interest.
14 And that's the common sense, that's why we're here in front of
15 you, ladies and gentlemen. In front of you New Yorkers.

16 If we were here kickbacks, stealing, devising schemes
17 and all this, why are we opening another company, and taking a
18 loan out. Ask yourself why are they opening another company
19 and taking a loan out.

20 You know, maybe the evidence will show these guys
21 never built a wall at the southern border. That they were in
22 over their head. everybody knows if you have a startup company
23 how difficult it is, right, on what to do.

24 Tim Shea is a real estate broker. His wife is a
25 social media guy. This other guy has no legs and no arm. They

M5o3shel

Opening - Mr. Meringolo

1 took on to build the wall. That's what the evidence is going
2 to show.

3 And does money go into Tim -- I'm honest. Does the
4 money go into Tim's account? And into Brian Kolfage's account?
5 The answer is yes. The answer is yes. But I'm asking you,
6 please wait for the cross-examination. I'm asking you please
7 wait. I'm not disputing that money going from Ranch to
8 Kolfage.

9 The other thing, ladies and gentlemen, they are going
10 to put a tax guy up there. Right. And the tax guy is going to
11 say, the evidence is going to show that Tim left things out.
12 Okay. Tim and his wife, that year was a great year for them.
13 They grossed about 415. Don't hold me to it. It's about that.
14 Tim pays taxes on all of the money. The money he gives to
15 Brian Kolfage. Anybody who has ever done their tax returns, I
16 told him the other day, why didn't you pull your credit card
17 and write the expenses off to this? Maybe everything was going
18 on. He's entitled to actually amend it right now and actually
19 save money on the taxes.

20 Also, the evidence will show, through that tax return,
21 is that's the money he gave Brian Kolfage. So he gives Brian
22 Kolfage aftertax dollars. Right. Now, I respectfully submit
23 we're still in the United States, no one can tell me what any
24 of us could do with aftertax dollars. If you want to buy
25 Bitcoin. You want to buy a list. You want to give it charity.

M5o3shel

Opening - Mr. Meringolo

1 You want to go to Vegas and put it on black. You do what you
2 want.

3 These two gentlemen had a handshake deal. They had a
4 handshake deal. You know what that is? A handshake deal to
5 buy the list. That's what the evidence will show. And now the
6 government wants to say it's nefarious, that the lawyer was
7 cleaning up the records, okay. It is not that they didn't
8 intend to -- they didn't intend to do a contract because they
9 had a handshake. And maybe, maybe, if Tim's lucky, there may
10 be evidence to show before the indictment that he said that it
11 was a list. You know. Maybe there is evidence. I don't know
12 if I can get that to you, but maybe there is evidence to show
13 what his state of mind, as we would say. His state of mind was
14 about the list.

15 So, you can have a handshake deal and then memorialize
16 it. There is nothing nefarious about that. There is no shell
17 this, shell that. You can memorialize an oral contract. I'm
18 not giving you the law, because, I don't even do that law. I
19 know you can have a handshake deal and memorialize a contract.

20 If the government doesn't prove these things beyond a
21 reasonable doubt, whatever feelings you have about me, about
22 Tim, about Clara, about Ang, you have to vote not guilty.

23 The reason we're here, we can't take wholesale of what
24 the government says. And I gave you that example right there,
25 with the text message that when you are deliberating, take that

M5o3shel

Gordon - Direct

1 text message, take their chart, take that text message and read
2 it. And then there will be other things I'll explain to you.

3 Anything taken out of context, pulling from the sky
4 and implementing it, you can make anything sound bad. Okay.

5 So with that, thank you for listening to me. I
6 respectfully submit, if I do my job at the end of the case, you
7 will vote not guilty because they didn't prove the case beyond
8 a reasonable doubt.

9 But the other thing I think you'll do is when you are
10 on the train going home, you'll say, that wasn't nice what they
11 did to Tim Shea. That wasn't nice. That wasn't a shell
12 company. This guy worked. And we're working people, and when
13 we are working people, you get paid. I'll prove to you that it
14 wasn't just one way. Thank you very much.

15 THE COURT: The government may call its first witness.

16 MS. MOE: Thank you, your Honor. The government calls
17 Daniel Gordon.

18 Would the Court like Mr. Gordon to remove his mask?

19 THE COURT: You may remove your mask.

20 MS. MOE: Thank you, your Honor.

21 DANIEL GORDON,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. MOE:

M5o3shel

Gordon - Direct

1 Q. Good morning, Mr. Gordon.

2 A. Good morning.

3 Q. Can you tell us where do you work?

4 A. I currently work at a company called Flexible Finance.

5 Q. How long have you worked there?

6 A. About eight months now.

7 Q. Where did you work before you worked at Flexible Finance?

8 A. I worked for GoFundMe.

9 Q. During what years did you work for GoFundMe?

10 A. From 2016 through toward the end of 2020.

11 Q. Can you explain for the jury what is GoFundMe?

12 A. GoFundMe is an online fundraising platform where people we
13 call campaign organizers can set up fundraisers to raise money.
14 And others called donors can gift money to those campaigns.

15 Q. What titles did you hold when you worked at GoFundMe?

16 A. I started as a vice president of trust policy and
17 communications. And then after a couple years, I was chief
18 business officer.

19 Q. You mentioned you had a role on trust policy and
20 communications. What does that team do at GoFundMe?

21 A. So the trust policy communications teams, they first and
22 foremost protect the platform from any misuse or violations of
23 our terms of service, our acceptable use policy. They also set
24 the policy. So what should GoFundMe allow on its platform what
25 should it not. They protect all the donors and the donations

M5o3shel

Gordon - Direct

1 through our donor protection policies, as well as our donor
2 guarantee we have against fraud. And then we also coordinate
3 with government stakeholders and law enforcement as needed.

4 Q. What was your role on that team?

5 A. So I created the team. Then I built it out to its current
6 state.

7 Q. Mr. Gordon, are you an attorney?

8 A. I am.

9 Q. Before you became an attorney, what kind of work did you
10 do?

11 A. I was in the Marine Corps as a captain.

12 Q. Now a moment ago you were explaining what GoFundMe is. I
13 want to ask you a bit more about that.

14 What kinds of things can someone raise money for on
15 GoFundMe.com?

16 A. So generally, on GoFundMe, people can raise money for any
17 purpose as long as it does not violate our terms of service and
18 our acceptable use policies.

19 Q. Can you please explain for the jury how someone would go
20 about setting up a GoFundMe campaign?

21 A. Sure. So GoFundMe has a website, and there is an app you
22 can download on to your phone. If you want to start up a
23 GoFundMe, you can either do it from the app or from the
24 website. You go ahead and provide the content on the page,
25 like you have to provide a description for what you want to

M5o3shel

Gordon - Direct

1 raise money for, for whom, you have to provide some photographs
2 or a video. Right. And some information to GoFundMe about who
3 you are, and so we can identify you as well.

4 Q. Once the campaign is set up at GoFundMe, what's the next
5 step in the fundraising process?

6 A. So generally, when you're, when somebody is organizing a
7 fundraiser, they want to attract attention and prospective
8 donors, so the next step would be to share the campaign which
9 can be done via e-mail or social media, Twitter, Facebook, the
10 like.

11 Q. How does someone go about donating to a GoFundMe campaign?

12 A. So every GoFundMe campaign has a donate button, whether it
13 is on the app, or on the website. And once somebody, a visitor
14 clicks on the donate button, they're taken to a fairly typical
15 online checkout like you might see on any other website where
16 the donor can enter their credit card or debit card or their
17 payment method, PayPal, for example. And then go through a
18 checkout process that they would see on any other e-commerce
19 website.

20 Q. In practical terms, once the donor clicks on that button
21 and enters out that form, where does the money go?

22 A. So GoFundMe partners with a payment processor at a bank,
23 and the funds are held by the payment processor at that bank
24 until GoFundMe's policies authorize a release.

25 Q. Why is it that the money doesn't immediately go to the

M5o3shel

Gordon - Direct

1 person who set up the fundraiser?

2 A. So, many fundraisers are not -- the purpose of the
3 fundraiser is not to give money directly to that individual.
4 They might be for a different purpose, maybe to an organization
5 or a different person. And what I, what we built at GoFundMe
6 was this separation of sort of the storytelling about the
7 fundraiser from the movement of money in order to protect that
8 money, to ensure that it goes to the destination, to the
9 recipient that the fundraiser was intended to send it to.

10 So we want to make sure if there is any checks that
11 need to be done, sometimes the campaign or the individual
12 behind the campaign can create some automated check in our
13 system, and we need to clear that before we're willing to
14 release the money.

15 Q. Can an organizer of a GoFundMe campaign change the
16 fundraising page for that campaign once people have started
17 donating?

18 THE COURT: One moment, please. What do you mean when
19 you say that a person behind the campaign can create an
20 automated check?

21 THE WITNESS: Oh, sorry, your Honor. So, no GoFundMe
22 has, we have a series of checks that are automated. The
23 GoFundMe trust and safety team has built a combination of
24 machine and people review, right, of the different fundraisers
25 was what I meant to say. So, as an individual would start a

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1 GoFundMe, the content on that that they wrote to put on the
2 page or maybe something about how they indicated who they were
3 as an individual could trigger a flag, either via machine that
4 identifies that flag or a person at GoFundMe who reviewed the
5 campaign and flagged something. And then that would be a
6 reason why we would not want to release funds immediately.
7 Because we want to make sure that the campaign is safe for
8 donors.

9 Q. Mr. Gordon, once someone has donated to a campaign, once
10 the campaign is up and running and people are donating, can the
11 organizer of that campaign change the fundraising page on
12 GoFundMe.com?

13 A. They can. There are some rules around that though.

14 Q. Can you please explain for the jury what rules there are at
15 GoFundMe about changing campaign pages after people have
16 started donating?

17 A. So once -- the first principle is once a campaign has been
18 created, and people have donated, those donors gave money to
19 that campaign with the understanding that the terms on the
20 campaign would -- were representations made by the organizer
21 about how that organizer would use those funds or to whom they
22 would be given to.

23 If there is a change in those representations,
24 GoFundMe has what we call a change of use policy. And that
25 change of use policy would require that all the existing donors

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1 to that point would be given an opportunity to receive a refund
2 if they chose, if they wished. So the policy would require
3 that the organizer notify all the existing donors of the
4 change, and then provide some period of time where the donors
5 who had already given money would have an opportunity to opt
6 out is what we call it, and say, I don't want to, I don't agree
7 with the new terms so I would like my money back.

8 That's one of the other reasons why we often will hold
9 the funds as well. We don't want to release them because we
10 may need to give the donors back the money if that would occur.

11 Q. Why does GoFundMe have a policy like that?

12 A. Because ultimately, a GoFundMe is really an agreement
13 between an organizer who is saying I'm going to use your money,
14 your donations for a purpose. And then the donors give money
15 after they read that purpose.

16 If the change -- if there was some change in the way
17 that those funds would be used, we view that as really a change
18 in the donor's understanding of how the campaign would work,
19 and we want to make sure we protect the donors above all by
20 giving them the opportunities to have a return if they wanted.

21 Q. I want to switch gears now and ask you about a particular
22 campaign.

23 Are you familiar with the We Build the Wall campaign
24 at GoFundMe?

25 A. Yes, I am.

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1 Q. Approximately when did you first learn about that
2 particular campaign?

3 A. I first learned about the wall campaign in mid
4 December 2018.

5 Q. I want to ask you a bit more about this campaign. But
6 before I do.

7 MS. MOE: Your Honor, I'd like to offer a stipulation
8 between the parties which is Government Exhibit S4 and a number
9 of exhibits pursuant to that. In particular, the government
10 offers Government Exhibit S4, and Government Exhibits 301, 306,
11 303, 307, 308, 309, 311, and Government Exhibits 402 through
12 408.

13 THE COURT: First let me explain what a stipulation
14 is. A stipulation is an agreement between the parties to
15 present evidence to the jury without calling a witness on that
16 subject matter.

17 Those items are admitted.

18 (Government's Exhibit S4, 301, 306, 303, 307, 308,
19 309, 311 received in evidence)

20 (Government's Exhibit 402 through 408 received in
21 evidence)

22 MS. MOE: Thank you, your Honor.

23 Ms. Drescher, can we please publish what's now in
24 evidence as Government Exhibit S4 so we can take a look at
25 paragraph one. Can we please highlight paragraph one. And I'm

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1 so sorry, Ms. Drescher, would you mind pulling it out so we can
2 see what's above paragraph one. Let's start there first.

3 So it is hereby stipulated and agreed by the United
4 States of America and Timothy Shea, the defendant that.

5 Q. And Mr. Gordon, can you please read that paragraph.

6 A. Starting with number one?

7 Q. Yes, please. Thank you.

8 A. Sure.

9 "Government Exhibits 301, 303, 306, 307, 308, 309 and
10 311 accurately reflect the GoFundMe campaign page that was
11 known as We the People Will Fund the Wall, We the People Will
12 Build the Wall, and We the People Built the Wall as of the
13 following dates which are reflected in each exhibit.

14 MS. MOE: Ms. Drescher, can you please highlight the
15 chart below so the jury can see it. Thank you.

16 Q. I'd like to ask you, Mr. Gordon, about the first of these
17 exhibits, Government Exhibit 301. So let's take a look at that
18 first.

19 Ms. Drescher, if you can please publish that.

20 Q. Do you recognize this, Mr. Gordon?

21 A. Yes, I do.

22 Q. What are we looking at here?

23 A. So this is the GoFundMe page for the We the People Will
24 Fund the Wall as of --

25 MS. MOE: Ms. Drescher, can you highlight in the

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1 upper-right corner.

2 A. Thank you. As of December 18, 2018.

3 Q. At the time the campaign was first brought to your
4 attention, what was the publicly stated purpose of the We Build
5 the Wall campaign?

6 A. The publicly stated purpose of the campaign was to raise
7 money to give to the federal government, I think it was the
8 Trump administration, directly. Money that would be used by
9 the government to build the border wall between the United
10 States and Mexico.

11 MS. MOE: Ms. Drescher, we can turn to page three of
12 this exhibit. Could you please highlight the bullet points at
13 the top.

14 Q. Mr. Gordon, can you please read -- let me just take a step
15 back.

16 Are we now looking at text that's still on the same
17 GoFundMe page?

18 A. Yes, you are.

19 Q. Mr. Gordon, can you please read these bullet points for the
20 jury.

21 A. "First. 100 percent of your donations will go to the Trump
22 wall. If for any reason we don't reach our goal, we will
23 refund your donation.

24 "Second. We are working with a law firm on a legal
25 document that will bind the government to using the funds for

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1 the border wall itself, nothing else.

2 "Third. We will hold all funds and not release a
3 single penny until we have all legal aspects covered to ensure
4 our money goes only to the wall.

5 "And last, if we don't reach our goal or come
6 significantly close, we will refund every single penny."

7 MS. MOE: Thank you, Ms. Drescher. We can take that
8 down.

9 Q. Mr. Gordon, what does it mean to be an organizer of a
10 GoFundMe campaign?

11 A. So, I was explaining earlier that to start a GoFundMe, you
12 would go to the website and enter some information about the
13 campaign, the description for the campaign, information about
14 yourself. That person who takes those actions, they are the
15 organizer.

16 Q. Who was the organizer for this particular campaign?

17 A. It was a gentleman named Brian Kolfage.

18 MS. MOE: Ms. Drescher, can we please publish the
19 first page of 301 again.

20 Q. Directing your attention to the date here. What is the
21 date on which this campaign was initiated?

22 A. It was initiated on December 16, 2018.

23 Q. Approximately how soon after that did this particular
24 campaign come to your attention?

25 A. Within 24 to 48 hours.

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1 Q. In general when you worked at GoFundMe, why would a
2 particular fundraising campaign come to your attention?

3 A. So as I said earlier, I was the head of this department, of
4 the trust and safety department. So one of the mandates of
5 that department was to look for -- identify and potentially
6 escalate possible violations of our terms of service or
7 acceptable use policy.

8 So, if there was a GoFundMe that maybe was
9 questionable about whether or not it did violate or there had
10 to be some other form of policy escalation, I was the senior
11 executive who would weigh in on those decisions.

12 Q. What brought this particular campaign to your attention?

13 A. So, my team had identified two concerns that they had. The
14 first concern was that the purpose of the campaign expressly
15 stated was to give money to the federal government. And we had
16 known from prior experience with fundraisers that were
17 attempting to give money to the federal government for a
18 variety of reasons, that there are rules against -- the
19 government itself has rules against that. They can't accept
20 those types of funds. And we have a term that says that a
21 campaign that would be impossible to complete would be a
22 violation of our terms.

23 The second reason that this was brought to my
24 attention was that there was a statement made in the campaign
25 that if 100 percent of the funds weren't raised, that the

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1 campaign organizer would refund all the donors. That in and of
2 itself is not necessarily an issue, except that the goal of the
3 campaign was \$200 million, which would have been several orders
4 of magnitude greater than any GoFundMe campaign had ever
5 raised, like in the history of the company to that point.

6 So, the combination of a very large goal and a
7 commitment in the campaign to refund all the donors if the goal
8 wasn't reached would potentially be an abuse of the platform.

9 Q. In addition to those issues, was there anything about the
10 rate of the fundraising for this campaign that came to your
11 attention?

12 A. Yes. Thank you. There is also -- this campaign was
13 raising money pretty quickly. So I think within the first day
14 it raised over six figures. Any time a GoFundMe is raising
15 money or having a number of visitors to its particular campaign
16 page that this campaign did would trigger a review by the team.

17 THE COURT: Why?

18 THE WITNESS: Because fundraisers that raise -- that
19 are going viral, as we would call it, they can attract the
20 potential for fraud. They can -- if there are problems with
21 that type of campaign, it becomes a procedural headache to
22 figure out how to refund all the donors if we would need to,
23 for example. And they can often take a life of their own very
24 quickly. And we need to be -- in the best interests of the
25 donors and of the bank that our partner bank and their

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1 policies, we have to know what's -- we have to have a high
2 level of confidence very quickly in those campaigns.

3 BY MS. MOE:

4 Q. Once these issues were brought to your attention, what was
5 your role in addressing those problems with this campaign?

6 A. So, first, I agreed with the team that those, that the
7 concerns that they raised were very valid concerns. And then
8 to supervise the team's efforts to work with the campaign
9 organizer to see if we could notify them of these potential
10 violations and see if they would put their campaign in
11 compliance.

12 Q. Were you yourself involved in some of those discussions
13 with the campaign about these issues?

14 A. I was.

15 Q. Who else at GoFundMe do you recall participating in those
16 discussions with the campaign?

17 A. We had another lawyer other than myself, we had several
18 members of our policy team who had been the ones to escalate,
19 and they continued to work on this particular campaign. And we
20 had our, we had a customer support representative who was the
21 main point of contact as a support rep between the company and
22 the campaign organizer.

23 Q. Who did you communicate with for this particular campaign
24 on the other side?

25 A. Most of my communications were with the campaign's lawyer.

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1 Q. Do you have any contact with anyone else at the campaign?

2 A. I also had some contact with Brian Kolfage who was the
3 organizer. There were a few others that were on e-mail threads
4 that I just don't recall right now.

5 Q. All right. So, you were explaining you had these
6 conversations with the campaign about coming into compliance
7 with GoFundMe's policies. About how long did those
8 negotiations last?

9 A. They lasted a couple weeks. Through the new year.

10 Q. While you were working through those issues, what did
11 GoFundMe do with the money that was being raised on the
12 platform?

13 A. So the money continued to be held at our partner bank. We
14 did not release any of the funds.

15 Q. Earlier we were talking about the rate of fundraising.
16 During those weeks while you were negotiating over these
17 issues, what was the volume of donations like for this
18 particular campaign during the weeks you were working these
19 issues out?

20 A. It remained high. In the multiple millions of dollars. I
21 don't recall the exact number.

22 Q. Did there come a time during your negotiations about coming
23 into compliance with GoFundMe's policies that you learned that
24 Brian Kolfage's plan for the campaign had changed?

25 A. Yes.

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1 Q. Approximately when did you learn that?

2 A. It was within a few days of January 1st.

3 Q. What was your understanding at that point about how the
4 campaign was going to change?

5 A. So, the campaign was going to change in at least two ways.
6 One was that all-or-nothing statement would be -- they wanted
7 to remove it. Which, and then, second, rather than give the
8 money directly to the government, the new plan as proposed was
9 to create an organization that the funds could be sent to, and
10 that organization would partner with private landowners along
11 the U.S. Mexico border to build sections of wall on those
12 landowners' private property.

13 Q. You're describing just now that the plan was to set up a
14 new organization. What was your understanding of what type of
15 organization it was? Was it a for-profit organization or a
16 not-for-profit?

17 A. No. The proposal was it would be a nonprofit organization
18 under Section 501 of the tax code.

19 Q. So when you learned that they were planning to set up a
20 nonprofit organization, did you ask for any documents from the
21 campaign?

22 A. Yes, we did. We asked for the founding documents, charter
23 bylaws, the incorporating documents as well as the approval
24 documents from the state, think it was Florida where they were
25 going to apply for incorporation.

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1 MS. MOE: Ms. Drescher, if you could please show just
2 the witness what's been marked for identification as Government
3 Exhibit 302.

4 Q. Do you recognize this?

5 A. Yes, I do.

6 Q. What is Government Exhibit 302?

7 A. This is a copy of the articles of incorporation for We
8 Build the Wall, Inc. which was the name of the nonprofit
9 corporation that the organizers had founded.

10 Q. Is this a fair and accurate copy of a document that the
11 campaign sent to you while you were working out these issues?

12 A. Yes.

13 MS. MOE: Your Honor, the government offers Government
14 Exhibit 302.

15 THE COURT: Any objection?

16 MS. CAPPELLINO: No objection, your Honor.

17 THE COURT: It is admitted.

18 (Government's Exhibit 302 received in evidence)

19 MS. MOE: Ms. Drescher, can we please publish that.

20 Q. Before we talk about this document, why was it important
21 for you to obtain a copy of the articles of incorporation for
22 We Build the Wall?

23 A. It was important that we review these documents because
24 both -- GoFundMe or our payment processor and the bank that is
25 regulated, all have an obligation to ensure that when money is

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1 being sent, that the recipient of the funds has been -- sort of
2 checked out to make sure that it's allowed under law, as well
3 as under all of our different company policies and the bank
4 policies to receive those funds.

5 In this instance, because the organization was so new,
6 there was no way for those checks to occur in the ordinary
7 course of business. So, we needed to ask for the documentation
8 in order to get all the parties comfortable with releasing
9 funds.

10 Q. So, taking a look at Government Exhibit 302. Focusing on
11 Article III where it says purpose. Could you please read for
12 the jury the purpose of this organization as it is listed in
13 the articles of incorporation.

14 A. "The purpose for which the corporation is organized is: To
15 promote social welfare within the meaning of Section 501(c)(4)
16 of the Internal Revenue Code, including, but not limited to,
17 funding, construction, administering, and maintaining a United
18 States southern border wall and the processes associated
19 therewith."

20 MS. MOE: Thank you. Ms. Drescher, we can take that
21 down.

22 Q. So we've been talking about the campaign and this plan to
23 switch to a nonprofit organization. We talked about this a
24 little bit earlier. But can you remind us, what are GoFundMe's
25 policies when a campaign changes?

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1 A. So when a campaign would change, we require that the
2 campaign organizers notify, usually it is via e-mail, all of
3 the donors that had already donated up to that point, telling
4 them of the new purpose, the new campaign purpose. And then
5 the donors would have an opportunity, it's usually either one
6 or two weeks, to decide whether they would like a refund. And
7 then at the end of that period, GoFundMe would go ahead and
8 release the funds.

9 Q. Did you have any conversations with the campaign about this
10 policy?

11 A. We did.

12 Q. What did you discuss?

13 A. So, we discussed that that policy didn't fit this
14 particular change in campaign use, because this change was so
15 material, right, so drastic, compared to the first campaign.
16 It was really closer to an entirely new campaign. So, instead,
17 GoFundMe required that the campaign follow what we called an
18 opt-in policy. So, you recall that the opt-out use of policy,
19 the donors have a period of time where they can choose whether
20 they want to opt-out of the campaign. And if they notify
21 GoFundMe, via a form, or any other way, then we would refund
22 them. But if they don't opt-out, then the funds just get
23 released and they are assumed to still be okay with the new
24 campaign terms.

25 In an opt-in policy, which is what we followed here,

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1 what we required here, the donors have to proactively tell
2 GoFundMe that they want to keep their money with the campaign.
3 And if they do that, then the funds can be released. But, a
4 donor who either writes back to GoFundMe and says I want my
5 money back or I don't approve, or they do nothing, all of those
6 donations would be refunded after the opt-in window ended.

7 Q. In your conversations with the campaign, after you raised
8 this policy, did you come to any agreement about how they were
9 going to move forward with the new campaign?

10 A. We did.

11 Q. What was that agreement?

12 A. So the agreement was that the campaign would -- the
13 campaign organizers would create a new campaign description,
14 and it would be published on a certain day. At the same time
15 the campaign would notify all the donors who had donated up to
16 that point of the change. And that they, we would create a --
17 we approved of a 90-day opt-in window. And there was a form
18 that donors could fill where they would have to affirmatively
19 check a box and say yes, I want my money to stay with the new
20 campaign. After the 90 days, all the donations that came from
21 donors who opted in would be released to the campaign and to
22 this new organization. And all the donations made by donors
23 who either wrote back and said -- and declined, right, they
24 affirmatively said no, or they just never responded, all that
25 money would be refunded.

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1 Q. I believe you mentioned just now this was going to happen
2 on a particular day that this would be announced; is that
3 right?

4 A. Correct.

5 Q. On what day was this new change going to be announced?

6 A. I believe it was January 11.

7 Q. What year?

8 A. 2019.

9 Q. Was that 2019?

10 A. 2019, yes.

11 Q. I want to talk to you about January 11, 2019 in a moment,
12 but before we get there. I want to talk to you about the days
13 leading up to that.

14 MS. MOE: Ms. Drescher, can you please publish what's
15 in evidence as Government Exhibit 303.

16 Q. So Mr. Gordon, what are we looking at here?

17 A. So, this is the campaign page for the wall campaign on
18 GoFundMe as of January 8, 2019.

19 Q. So just a few days before the opt-in program was announced?

20 A. Correct.

21 Q. According to the website here, at this point, approximately
22 how much had been donated?

23 A. Over about 19 and a half million dollars.

24 Q. And while we're talking about the amount listed on the
25 website. Can you please explain for jury what this figure

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1 represents and how this number gets on the website?

2 A. So the number represents the number of donations, which you
3 can see below, raised by 325,000 people over 22 days. The
4 number above would reflect all of the online donations made to
5 the GoFundMe. It could also include what we call offline
6 donations, because GoFundMe cannot accept checks directly. So,
7 when a campaign provides proof of a check, they are allowed to
8 add the check amount to the number, to the total number as
9 well.

10 MS. MOE: Ms. Drescher, we can take that down.

11 Q. In the days leading up to January 11, 2019, what documents,
12 if any, did GoFundMe request from the organization to prepare
13 for the launch of the new campaign?

14 A. So, as I said earlier, we requested some documents about
15 the 501(c)(4) organization. And we also requested a copy of
16 the new campaign description that would have been posted on
17 January 11.

18 Q. Why did GoFundMe want to review the revised campaign page
19 before it went out?

20 A. We wanted to ensure that the revised campaign page would
21 comply with our acceptable use policies and terms of service.

22 Q. I want to talk about that a little bit more.

23 MS. MOE: Ms. Drescher, can you please show just the
24 witness what's been marked for identification as Government
25 Exhibit 305.

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1 Q. Mr. Gordon, do you recognize this?

2 A. Yes, I do.

3 Q. What is Government Exhibit 305?

4 A. This is an e-mail thread between Rich Kaye, who I mentioned
5 was the lawyer for the campaign organizers here, myself and
6 several other individuals from GoFundMe and from the campaign.

7 Q. Is this a fair and accurate copy of an e-mail you received
8 on January 11, 2019?

9 A. Yes.

10 MS. MOE: Your Honor, the government offers Government
11 Exhibit 305.

12 MS. CAPPELLINO: No objection, your Honor.

13 THE COURT: It is admitted.

14 (Government's Exhibit 305 received in evidence)

15 MS. MOE: Can we publish that, please.

16 Q. Now that we are all looking at this document, if we could
17 highlight the header. Without going into every e-mail here.
18 Just in general terms, who is this e-mail from and who is it
19 to?

20 A. This e-mail is from Rich Kaye who was the campaign
21 organizer's lawyer. It is to myself, Kim Wilford who was the
22 other lawyer from GoFundMe that I mentioned earlier, and Kelsey
23 Mathis who is the customer support representative from GoFundMe
24 that I mentioned earlier. And then there are several
25 individuals that are copied on the e-mail, including Brian

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1 Kolfage and two others.

2 Q. We'll talk about this more in a moment. But do you see
3 right beneath that, are there attachments to this e-mail?

4 A. Yes, there were two.

5 Q. We'll talk about that a little bit more in a moment.
6 Before we get there, I want to look at the text below in the
7 thread. If we can blow that up.

8 So lower in this e-mail thread, is this an e-mail from
9 Rich Kaye to you and other people?

10 A. Yes.

11 Q. Could you please read this e-mail for the jury.

12 A. I can. There is a bit that's cut off on the right.

13 Q. I'm sorry. So Ms. Drescher --

14 A. It looks like it's cut off in the actual exhibit.

15 MS. MOE: Let me see if I can get you a paper copy.
16 Your Honor, may I approach the witness?

17 THE COURT: You may.

18 MS. MOE: Thank you.

19 A. What would you like me to read?

20 Q. Just for the record, I've handed the witness what's now in
21 evidence as Government Exhibit 305.

22 If you could take a look on the thread below, in the
23 full paragraph that starts "good morning," would you mind
24 reading that for the jury.

25 A. Read the full paragraph?

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1 Q. Yes, please. Thank you.

2 A. "Good morning. We are still waiting on the bank account
3 information, but expect to have shortly. Attached please find
4 the revised GoFundMe announcement where I added 'I personally
5 will not take a penny of compensation from these donations.'
6 Highlighted for your convenience. And the attached amended and
7 restated bylaws amending Section 8.4 to add 'The initial
8 president is Brian Kolfage. Mr. Kolfage will take no salary
9 for the performance of his duties as president of the
10 corporation.' We made these changes to coincide with Brian's
11 desire to apply all donated funds to the mission and in
12 response to the erroneous BuzzFeed story mentioned in Brian's
13 previous e-mail message. Please let me know if this is
14 acceptable to GoFundMe. Best regards Rich Kaye."

15 Q. So the first half of this e-mail talks about some
16 documents. So are those the documents we were talking about
17 earlier?

18 A. Yes.

19 Q. I want to talk about that in a moment. First I want to ask
20 you about the second half of this e-mail, about BuzzFeed story.
21 Take a step back.

22 What was your understanding of what Rich Kaye was
23 communicating to you when you got this e-mail?

24 A. So, Rich had told us that there was a story, a news story
25 on BuzzFeed, which is like an online news website of some sort,

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1 that had mentioned that Brian Kolfage had done something
2 inappropriate with some funds that were not relevant -- that
3 were not necessarily related to this particular campaign that
4 had happened earlier. And so, Brian Kolfage and Rich wanted to
5 add in some language in the campaign that we're -- that was
6 going to say that Brian would not take any compensation from
7 the donations. And then they were going to amend the bylaws of
8 the organization to put some enforcement mechanism within the
9 bylaws themselves.

10 Q. Now, did GoFundMe ask the campaign to promise donors that
11 none of the money would go to Brian Kolfage?

12 A. Sorry. Could you repeat the question?

13 Q. Did GoFundMe ask the campaign to promise the donors that
14 none of the money would go to Brian Kolfage?

15 A. No, we did not.

16 Q. Whose idea was that?

17 A. That was Brian's and/or Rich's idea.

18 Q. So, taking a step back. Let's go back to the top of the
19 e-mail. We were talking about two attachments to this e-mail;
20 is that right?

21 A. Correct.

22 Q. So let's take a look at those two attachments.

23 MS. MOE: If we could take that down, and show just
24 the witness what's been marked for identification as Government
25 Exhibits 305A and B just side by side.

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Gordon - Direct

1 Q. What are these two documents?

2 A. So these are the attachments that Rich Kaye had sent me in
3 the prior e-mail.

4 MS. MOE: The government offers Government Exhibits
5 305A and 305B.

6 MS. CAPPELLINO: No objection, your Honor.

7 THE COURT: They are admitted.

8 (Government's Exhibit 305A, 305B received in evidence)

9 Q. Let's turn first to Government Exhibit 305A. What are we
10 looking at here?

11 A. So this is a copy of the amended and restated bylaws for
12 the nonprofit corporation.

13 THE COURT: Which corporation are you referring to?

14 THE WITNESS: The We Build the Wall, Inc. which was
15 the corporation that the campaign organizers had created to
16 deliver funds to.

17 Q. Again, why did GoFundMe need to see a copy of the bylaws
18 for We Build the Wall, Inc.?

19 A. So, two reasons. The primary reason, which predated this
20 e-mail, was that, as I had mentioned earlier, this organization
21 was new, and GoFundMe, our processor and the banks, all needed
22 to review and sign off this organization was a safe
23 organization to give money to. It was duly incorporated and
24 whatnot.

25 The second reason was that because the campaign was

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Gordon - Direct

1 going to have this representation that Brian Kolfage would not
2 take a penny from the campaign, we wanted to just review how
3 that particular representation may be enforced within the
4 bylaws.

5 Q. So just to be clear, when you receive this document, what
6 were you looking for when you reviewed it?

7 A. At this point in time, I was reviewing it for the language
8 that Rich had indicated in his e-mail, which was that Brian
9 Kolfage would not be compensated by the campaign.

10 Q. Let's take a look at that.

11 MS. MOE: Ms. Drescher, can we please turn to page
12 five of the document. And if you could please highlight
13 section 8.4 where it says president.

14 Q. Could you please read that for the jury.

15 A. "Section 8.4. President. The president of the board shall
16 preside at meetings of the board of directors and shall perform
17 such other duties and have such other powers as the board of
18 directors may from time to time prescribe. The initial
19 president is Brian Kolfage. Mr. Kolfage will take no salary
20 for the performance of his duties as president of the
21 corporation."

22 Q. As you were doing your review of this campaign, if you'd
23 learned that Brian Kolfage was planning to earn money from We
24 Build the Wall, what would you have done?

25 A. We would not have allowed them to put in the

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Gordon - Direct

1 representations that Brian could not earn money from the
2 campaign or from the organization.

3 Q. If you learned that We Build the Wall wasn't planning to
4 follow these bylaws, what would you have done?

5 A. We wouldn't have allowed them to continue forward.

6 Q. I want to turn now and talk about Government Exhibit 305B.
7 Is this the other attachment to the e-mail?

8 A. Yes, this is.

9 Q. What are we looking at here?

10 A. So this is the text, the proposed text copy of the new
11 campaign that the organizers were going, were planning to post
12 on January 11.

13 Q. When you say the new campaign that they were planning to
14 post, where was this text going to go?

15 A. This text would go on to the existing GoFundMe as an
16 update. They would be changing the campaign language. As I
17 mentioned earlier, this was, as part of the change of terms
18 policy, we were, at GoFundMe, were enforcing this would be the
19 new campaign language that would also have to go out to all the
20 existing donors with that opt-in requirement.

21 Q. Why did GoFundMe need to review a copy of the new language
22 that was going to go up on the campaign?

23 A. We needed to review this copy to ensure that the revised
24 campaign language would not violate our terms.

25 Q. When you reviewed a copy of this document, what, if

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1 anything, were you looking for when you reviewed it?

2 A. So, first and foremost we would be reviewing this copy to
3 ensure that the two prior violations were no longer present,
4 which would be the all-or-nothing requirement as well as the
5 giving money to the government. So those shouldn't be there.
6 And that the campaign accurately completely described the new
7 purpose that we had already -- the campaign organizers had
8 already agreed to, which with was to create the 501(c)(4), and
9 partner with private landowners on the border.

10 Second, we also would have reviewed the whole
11 campaign -- this revised campaign description just to ensure
12 there were no other new potential violations of our policies
13 that arose from the new language here.

14 Q. Let's turn to page two of this document. And if we could
15 highlight the paragraph right there that starts 100 percent.
16 Could you please read this text for the jury.

17 A. "100 percent of the funds raised on GoFundMe will be used
18 in the execution of our mission and purpose. To honor the
19 commitment, we made to our donors; all funds raised, less the
20 processing fees and refunds, will be transferred to a special
21 purpose account to carry out the purposes and mission of We
22 Build the Wall, Inc. I personally will not take a penny of
23 compensation from these donations."

24 Q. This paragraph that we're looking at here, did this
25 language ultimately go up on the GoFundMe website?

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1 A. I believe, yes.

2 Q. I want to talk about that a little bit. If we could please
3 publish what's in evidence now as Government Exhibit 306. If
4 we could please highlight the upper-right-hand corner.

5 What's the date here of this screenshot of the
6 website?

7 A. The date of the screenshot is January 11, 2019.

8 Q. Is that the date the opt-in change was announced?

9 A. Yes.

10 Q. According to the website, by this point, how much is raised
11 through GoFundMe -- or let me rephrase.

12 At this point, how much had the campaign raised?

13 A. According to the website, about 20.1 million.

14 Q. Highlighting the text below the photograph where it says
15 update January 11, 2019. Is this the language we were just
16 looking at in the attachment to that e-mail?

17 A. Yes, it is.

18 Q. Earlier we were discussing the language in the bylaws and
19 in the draft campaign page about Brian Kolfage not taking a
20 penny from the donations. If you could turn to page four and
21 highlight the second paragraph.

22 Do you see that paragraph here?

23 A. Yes, I do.

24 Q. Is that the promise we just talked about that was in the
25 draft document you reviewed?

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Gordon - Direct

1 A. Yes, it is.

2 Q. Can you please read that for the jury.

3 A. "100 percent of the funds raised on GoFundMe will be used
4 in execution of our mission and purpose. To honor the
5 commitment, we made to our donors; all funds raised less the
6 processing fees and refunds, will be transferred to a special
7 purpose account to carry out the purposes and mission of We
8 Build the Wall, Inc. I will personally not take a penny of
9 compensation from these donations."

10 Q. So at this point, is this promise live on the GoFundMe
11 website?

12 A. Yes, it is.

13 Q. Let me just pause here and ask you this. In your
14 conversations with Rich Kaye and Brian Kolfage, leading up to
15 January 11, did they ever tell you about someone named Timothy
16 Shea?

17 A. Not that I recall.

18 Q. To be clear, you don't recall Mr. Kolfage ever telling you
19 he had a business partner named Timothy Shea?

20 A. No, not that I recall.

21 Q. Did Brian Kolfage ever tell you about his plans for an
22 energy drink business?

23 A. No, not that I recall.

24 Q. All right. I want to ask you a few more questions about
25 this GoFundMe campaign for We Build the Wall.

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1 If we could please publish what's in evidence as
2 Government Exhibit 311. If we could just, first let's start
3 with the date. If you could highlight the upper-right-hand
4 corner.

5 What's the date of this page?

6 A. January 17, 2019.

7 MS. MOE: Ms. Drescher, if you could scroll through
8 this screenshot.

9 Q. Mr. Gordon, did there appear to be videos on this page?

10 A. Yes, the big black boxes would be where the video would be
11 embedded.

12 Q. When someone puts up a GoFundMe campaign, can you post
13 videos to the fundraiser page?

14 A. Yes.

15 Q. Can donors click on those videos as they are reviewing the
16 campaign?

17 A. Yes.

18 MS. MOE: At this time, your Honor, I'd like to read a
19 portion from the stipulation that's now in evidence as
20 Government Exhibit S4. If we could publish Government Exhibit
21 S4 and highlight paragraph two.

22 Q. Mr. Gordon, could you please read that for the jury.

23 A. Sure.

24 "Government Exhibits 402 and 405 are true and accurate
25 copies of the videos that appeared on the We the People Build

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Gordon - Direct

1 the Wall GoFundMe page on January 17, 2019 which is Government
2 Exhibit 311."

3 MS. MOE: So we were just talking about Government
4 Exhibit 311 and videos on the page. If we could now publish
5 what's in evidence as Government Exhibit 405, one of the videos
6 from that page.

7 (Video playing)

8 Q. So, after We Build the Wall announced this opt-in campaign,
9 were there donors who opted in to the new campaign?

10 A. Yes, there were.

11 Q. Approximately how many donors opted into the new campaign?

12 A. I don't recall the exact number. But it was a significant
13 number of the preexisting donors opted in.

14 Q. While the opt-in process was happening, was the campaign
15 able to raise new donations?

16 A. Yes, it was.

17 Q. Did the campaign raise new funds after January 11, 2019?

18 A. It did.

19 Q. Did We Build the Wall raise money outside of the GoFundMe
20 platform?

21 A. Yes.

22 Q. How were they raising money?

23 A. So, I only know of one way. There may have been others.

24 But the way that I knew that they were raising money was that
25 they had created their own website that was not on GoFundMe. I

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Gordon - Direct

1 think it was We Build the Wall.US. And they had a donation
2 button and means to donate or to give money directly on their
3 own website.

4 Q. Have you visited that website before?

5 A. Yes.

6 MS. MOE: Ms. Drescher, if you could please publish
7 again Government Exhibit S4 which is in evidence, and highlight
8 paragraph four.

9 Q. Mr. Gordon, once that's highlighted, can you please read
10 that for us.

11 A. "Government Exhibits 406 and 407 are true and accurate
12 screenshots of portions of the website for We Build the Wall as
13 of January 19, 2019. Government Exhibit 407 contains a
14 screenshot of the video marked as Government Exhibit 405."

15 Q. So let's take a look at the website. If we could publish
16 what's in evidence as Government Exhibit 407 and turn to page
17 two.

18 What are we looking at here?

19 A. This is the We Build the Wall website that was -- that is
20 their own separate website that was not part of GoFundMe.

21 Q. And if we could please highlight the upper-right-hand
22 corner. What does it say here?

23 A. Would you like for me to read it?

24 Q. Yes, please.

25 A. "If you donated before January 11, opt-in here. If you

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Gordon - Direct

1 donated before January 11, opt-in and make sure your
2 contribution counts."

3 Q. Turning back to the first page of this screenshot. Do you
4 see at the top where it says FAQ?

5 A. Yes.

6 Q. On the menu?

7 What does FAQ stand for?

8 A. FAQ generally stands for frequently asked questions.

9 Q. So let's take a look at that page. If we could publish
10 what's in evidence as Government Exhibit 406.

11 Do you see the list of questions here on this page?

12 A. Yes.

13 MS. MOE: If you could please highlight the first
14 question.

15 Q. Mr. Gordon, could you please read for us the question and
16 then the answer.

17 A. Sure.

18 "What is We Build the Wall, Inc.?"

19 "We Build the Wall, Inc. was incorporated in the state
20 of Florida on December 28, 2018, as a nonprofit corporation
21 with the stated purpose of: To promote social welfare within
22 the meaning of section 501(c)(4) of the Internal Revenue Code
23 regarding funding, construction, administering, and maintaining
24 a United States southern border wall, and the processes
25 associated therewith. We Build the Wall, Inc. is presently

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1 applying to the IRS for recognition as a nonprofit tax exempt
2 social welfare organization under section 501(c)(4) of the
3 Internal Revenue Code. Contributions or gifts to We Build the
4 Wall, Inc. are not tax deductible for IRS purposes."

5 (Continued on next page)

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Gordon - Direct

1 BY MS. MOE:

2 Q. All right. So scrolling down this website, if we could
3 turn to page 3. Do you see the question here that says, How
4 much is Brian Kolfage getting paid?

5 A. Yes.

6 Q. What's the answer on the website?

7 A. In accordance with Mr. Kolfage's personal pledge and the
8 bylaws of We Build the Wall, Inc., Mr. Kolfage will not profit
9 even a single penny from We Build the Wall, Inc.

10 MS. MOE: Your Honor, if I could have just a moment.

11 THE COURT: All right.

12 (Counsel conferred)

13 MS. MOE: Thank you, your Honor.

14 THE COURT: One moment, please.

15 You may continue.

16 MS. MOE: Thank you, your Honor.

17 BY MS. MOE:

18 Q. Mr. Gordon, at some point after donors opted into the new
19 plan for the new campaign, did GoFundMe release the opted-in
20 money to We Build the Wall?

21 A. Yes, we did.

22 Q. And did GoFundMe release the money from the new donations
23 as well?

24 A. By new donations, you mean the donations that were given
25 after January 11?

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Gordon - Direct

1 Q. Yes. Did GoFundMe release that money, too?

2 A. Yes, we did.

3 MS. MOE: So if we could publish what's in evidence as
4 Government Exhibit 308. And if we could highlight the upper
5 right-hand corner.

6 Q. What's the date of the page at this point?

7 A. The date is July 7, 2019.

8 Q. And according to the website, by this point how much did
9 the campaign raised?

10 A. According to the website, the campaign had raised almost
11 \$25 million.

12 Q. In 2019, was it common for GoFundMe campaigns to raise that
13 much money?

14 A. No.

15 Q. How did the volume of fundraising for this particular
16 campaign compare to other GoFundMe campaigns?

17 A. At this time, like in July of 2019, this was the largest
18 GoFundMe in the history of the company.

19 Q. As you sit here today, do you know where the money went
20 after it was transferred to We Build the Wall?

21 A. No, I don't.

22 Q. Do you have any firsthand knowledge of how We Build the
23 Wall used that money?

24 A. No, I don't.

25 MS. MOE: Nothing further, your Honor.

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Gordon - Cross

1 Thank you, Mr. Gordon.

2 THE COURT: Cross-examination.

3 MS. CAPPELLINO: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MS. CAPPELLINO:

6 Q. Good morning, Mr. Gordon.

7 A. Good morning.

8 Q. I'm Anjelica Cappellino. I'm one of the lawyers that
9 represent Timothy Shea.

10 Now, you never met Mr. Shea; is that right?

11 A. That is correct.

12 Q. And you never spoke to him, right?

13 A. That is correct.

14 Q. No email communications?

15 A. None that I recall.

16 Q. Okay. And to your knowledge, you don't really know him at
17 all, right?

18 A. That is correct.

19 Q. And is it fair to say your main point of contact for the We
20 Build the Wall campaign was an attorney by the name of Richard
21 Kaye?

22 A. Yes, he was my main point of contact.

23 Q. And he's from some firm in Atlanta, to your knowledge?

24 A. I don't recall where the firm was, but yes, somewhere in
25 the southeast.

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Gordon - Cross

1 Q. Okay. And does Barnes & Thornburg sound familiar?

2 A. Yes.

3 Q. Now, Mr. Kolfage was the GoFundMe account owner; correct?

4 A. That is correct.

5 Q. I'm sorry. Is it fair to say that he was the campaign
6 organizer? Is that GoFundMe parlance?

7 A. Yes, that would be more accurate.

8 Q. Okay. Campaign organizer.

9 Now, you mentioned there were two main issues with
10 this campaign, right? Now, the first one being they were
11 promising a refund if certain benchmarks weren't met, right?

12 A. Correct. They were promising a refund if 100 percent of
13 the campaign goal was not met.

14 Q. And like you described, that would have been a procedural
15 headache for GoFundMe, right?

16 A. Well, the way I characterize it is it's an abuse of the
17 platform, because they would -- the most likely outcome would
18 be that we would be accepting a bunch of donations only to
19 refund them, which we don't allow.

20 Q. And that would create more work for GoFundMe, right?

21 A. Create, yes, work for GoFundMe and headache for donors.

22 Q. That would require resources to process the refunds?

23 A. That is correct.

24 Q. Processing fees would have to be incurred; correct?

25 A. Yes.

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Gordon - Cross

1 Q. And customer service, bandwidth, etc., etc., this would all
2 come out of GoFundMe time and resources, right?

3 A. That is correct.

4 Q. Okay. That was the first issue.

5 Now, another issue was, as you had testified,
6 Mr. Kolfage wanted to raise money and then give it directly to
7 the government, right?

8 A. Yes.

9 Q. Now, there were some legal issues regarding whether someone
10 can or cannot do that, right?

11 A. Yes.

12 Q. I believe you testified you had prior experience with this
13 issue?

14 A. Yes.

15 Q. It was determined by GoFundMe and perhaps their legal
16 counsel, that you cannot just raise money and walk it to the
17 federal government, right?

18 A. Yes. There are some very narrow exceptions that I was
19 aware of, but yes, generally that is correct.

20 Q. And this isn't something typical or specific to
21 Mr. Kolfage, right?

22 A. No, it is not.

23 Q. Or to We Build the Wall?

24 A. Correct. This is a generally applicable rule.

25 Q. Okay. So ultimately it was determined that it just simply

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Gordon - Cross

1 can't be done?

2 A. Correct.

3 Q. Despite this being what Mr. Kolfage had said he wanted in
4 his campaign, right?

5 A. Correct.

6 Q. So now, instead of the money being handed over to the
7 government, it was determined it would be given to the We Build
8 the Wall nonprofit, as you mentioned; correct?

9 A. Yes.

10 Q. And now, part of this decision was that each donor would be
11 contacted and they would get to decide whether they want to opt
12 in to this new charity, right? Excuse me, this new nonprofit?

13 A. Correct.

14 Q. And you refer to this as the opt-in or the opt-in email, is
15 that fair to say?

16 A. Yes.

17 Q. So now they could opt in, meaning they could choose to move
18 their money into this new We Build the Wall nonprofit that
19 Mr. Kolfage created, or they can keep their donation, right?
20 Or, excuse me, be refunded?

21 A. Refunded their donation; correct.

22 Q. And donors were advised of these rights via email, right?

23 A. The donors were advised of those rights via email.

24 Q. And ultimately, most donors did choose to opt in, right?

25 A. I don't recall if it was most. I don't remember how many,

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Gordon - Cross

1 sorry.

2 Q. Around that time, was it about 325,000 donors, to your
3 recollection?

4 A. Yeah, that sounds about right.

5 Q. And is it fair to say that a majority chose to opt in?

6 A. Again, I don't remember. It was a substantial number.

7 Q. And just to check the money at that point, that was around
8 18 million in the GoFundMe campaign?

9 A. I don't recall the exact number.

10 Q. Was it over -- was it several million or up?

11 A. Oh, yes, yes, in the millions. Over 10 million.

12 Q. Okay. So we had 10 million and a few 100,000 donors, fair
13 to say, ballpark estimate?

14 A. Yeah, that's fair.

15 Q. And at that time -- excuse me. The opt in was in the
16 beginning of January in 2019, right?

17 A. Correct.

18 Q. Now, if GoFundMe had to refund a majority of that \$18
19 million, is it fair to say GoFundMe would know about that?

20 A. Oh, yeah, GoFundMe would know about that.

21 Q. Okay. So is it fair to say about 90 percent of the donors
22 chose to opt in?

23 A. I don't know. I'm not sure how the -- how you're doing the
24 math. I'm sorry, I'm not quite following you.

25 Q. Fair enough.

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Gordon - Cross

1 Now, these donors, when they donate to a GoFundMe
2 campaign, any campaign, do they put their contact information
3 down into the form at all?

4 A. They do.

5 Q. And who owns that data?

6 A. Well, I don't know about the legal ownership. From a
7 policy perspective, I like to think that the donor owns that
8 data.

9 Q. So if I start a campaign and I have donors donating and
10 they give me their email addresses, do I have a means of
11 communicating with those donors directly?

12 A. Yes, you do.

13 Q. Because if I post an update, say, to my campaign, those
14 donors get that update, right?

15 A. Yes, that's correct.

16 Q. And I'm assuming, correct me if I'm wrong, but GoFundMe
17 wants the campaign organizers to be in communications with the
18 donors, right?

19 A. That is correct.

20 Q. Because we want the donors to be up to date on what's going
21 on in the campaign, right?

22 A. Yes.

23 Q. And any changes, right?

24 A. Yes.

25 Q. Okay. So if I'm running that campaign, I'm the campaign

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Gordon - Cross

1 organizer, I'm able to -- excuse me, when I create an update on
2 my campaign, those donors get it via email?

3 A. Correct. An update to the campaign is automatically sent
4 to every donor.

5 THE COURT: But is it that the campaign organizer has
6 knowledge of the specific email addresses?

7 THE WITNESS: Not through the GoFundMe app that the
8 campaign organizer would interface with. So when any campaign
9 organizer posts an update, the GoFundMe system automatically
10 distributes that update to every donor.

11 THE COURT: But does GoFundMe tell the campaign
12 organizer that list of emails?

13 THE WITNESS: GoFundMe may provide organizers with a
14 list, but they don't do it in every instance.

15 BY MS. CAPPELLINO:

16 Q. And there would be value in a list of donors, is that fair
17 to say?

18 A. Yes. Generally, donor lists have value.

19 Q. And as is the case sometimes, as you may or may not know
20 with data, would you be able to buy and sell that data to an
21 interested party?

22 A. I don't know firsthand, but my understanding from working
23 with charities is that donor lists can be made available.

24 Q. And sometimes would those be available for marketing
25 purposes or promotional purposes?

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1 A. I don't know.

2 Q. Lastly, how much money has been refunded to donors since
3 the inception of this case in August 2020, if you know?

4 A. I don't know.

5 Q. Do you have a ballpark estimate?

6 A. I don't. I left the company in October of 2020.

7 Q. Thank you.

8 MS. CAPPELLINO: No further questions.

9 THE COURT: Redirect?

10 MS. MOE: No, thank you, your Honor.

11 THE COURT: You may step out.

12 THE WITNESS: Thank you.

13 (Witness excused)

14 THE COURT: Please call your second witness.

15 MR. ROOS: Your Honor, if it's okay with you, we've
16 got a few just very brief stipulations and exhibits that I'll
17 offer, and then we can call our next witness. Is that okay?

18 THE COURT: That's fine.

19 MR. ROOS: We have three stipulations and accompanying
20 exhibits. I'll try to read these in the most animated way
21 possible, but I want to set everyone's expectations pretty low
22 for that.

23 The first stipulation the government offers is
24 stipulation S-5 and the accompanying exhibits. And
25 Ms. Drescher, could we just have S-5 up on the screen for the

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1 parties.

2 And the government offers exhibit stipulation S-5 and
3 the referenced exhibits, which are: 1000, 1200, 1300, 1400,
4 1500, 1600, 1700, 1800, 1900, 2000, 2100, 2200, 2300, 2400.

5 Any objection?

6 MS. CAPPELLINO: No objection.

7 THE COURT: They are admitted.

8 (Government's Exhibits 1000, 1200, 1300, 1400, 1500,
9 1600, 1700, 1800, 1900, 2000, 2100, 2200, 2300, 2400 received
10 in evidence)

11 MR. ROOS: And could we publish this to the jury?

12 THE COURT: You may.

13 MR. ROOS: And it says in the relevant part, paragraph
14 1: The following government exhibits which I just read are
15 true and correct copies of account information, statements, and
16 other bank records from the following financial institutions.
17 Then it lists several bank accounts on the most right column,
18 and the financial institutions in the middle column, and the
19 government exhibit on the far left column.

20 And we can take that down, Ms. Drescher.

21 Next, the government offers Exhibit S-6 and the
22 referenced exhibits therein.

23 I'm sorry, your Honor. May I just have one second
24 with defense counsel?

25 (Counsel conferred)

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1 MR. ROOS: Pursuant to this stipulation, the
2 government offers Exhibit 16, 19, 22, 26, 28, 33, 36, 38, 42,
3 43, 44, 45, 46, 48, 49; and then 101 to 147, 149, 152, and all
4 of their subparts; and then 951, 953 to 958 and their subparts.

5 MS. CAPPELLINO: No objection, your Honor.

6 THE COURT: They are admitted.

7 (Government's Exhibits 16, 19, 22, 26, 28, 33, 36, 38,
8 42 through 46, 48, 49, 101 to 147, 149, 152, 951, 953 to 958
9 received in evidence)

10 MR. ROOS: And can we publish this to the jury?

11 THE COURT: You may.

12 MR. ROOS: And I will just read a few portions here.

13 In paragraph 1, the exhibits I reference there, which
14 are listed out, say that: iCloud is a storage service provided
15 by Apple that can be used to back up or store data, including
16 text messages called iMessages from an Apple iPhone. And all
17 of the exhibits listed there are authentic copies of iMessages
18 that were lawfully obtained pursuant to a court-authorized
19 search warrant, that were backed up to an iCloud account
20 registered to Andrew Badolato from his iPhone.

21 And then paragraph 2: The exhibits that are
22 referenced there are copies of emails and their attachments
23 that were produced by email service providers pursuant to
24 court-authorized search warrants.

25 And we can go to paragraph 3.

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1 Paragraph 3 on that page and on the next page are --
2 states that those referenced exhibits are publicly posted posts
3 on Twitter from the Twitter account @BrianKolfage at the dates
4 displayed on the exhibits, and they were produced by Twitter
5 pursuant to court-authorized search warrant.

6 And then finally, the fourth paragraph: Government
7 Exhibits 953 through 958 are authentic copies of public posts
8 made on the Facebook page We Fund Trump Wall that were produced
9 by Facebook pursuant to a court-authorized search warrant.

10 We can take that down.

11 Then can we have S-7 for the parties. So S-7 is a
12 stipulation between the parties. And I will first offer the
13 exhibits and the stipulation.

14 So S-7 plus Exhibits 1 to 15, 17, 18, 21, 23, 24, 25,
15 29 to 32, 34, 35, 37, 39 to 41, 47, 50 to 52, 53, 54, 55, 56,
16 56-A-1, 57, 58, 59 and all of their subparts; also 501; and
17 then 148, 150, 151, 153 and its subparts; 231, 232 and its
18 subparts.

19 MS. CAPPELLINO: No objection, your Honor.

20 THE COURT: They are admitted.

21 (Government's Exhibits S-7, 1 to 15, 17, 18, 21, 23 to
22 25, 29 to 32, 34, 35, 37, 39 to 41, 47, 50 to 56, 56-A-1, 57 to
23 59, 501, 148, 150, 151, 153, 231, 232 received in evidence)

24 MR. ROOS: Thank you, your Honor.

25 And for this one, we'll just put this up for the jury,

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1 Ms. Drescher. Thank you. And I'll just read the relevant
2 portions when they are going to come up with a witness later
3 today, so I'll just read the relevant portions then.

4 Finally, your Honor, the government offers Exhibit
5 313-A and 313. First, can we see 313-A for the parties. This
6 is a declaration of custodians of records from an individual in
7 the trust and safety part of GoFundMe. And it is a
8 certification that a certain record is a business record.

9 And can we display Government Exhibit 313. It's a
10 spreadsheet and I think it's loading up, but there it is. And
11 the certification says it's all the donation records.

12 So the government offers this pursuant to 902(11).

13 Any objection?

14 MS. CAPPELLINO: No objection.

15 MR. ROOS: And, your Honor, on this particular
16 exhibit, since there is personal identifying information of the
17 donors, we would just offer this one under seal.

18 THE COURT: It's admitted.

19 (Government's Exhibits 313, 313-A received in
20 evidence)

21 MR. ROOS: Of course, it's available to the jurors.

22 THE COURT: Yes.

23 MR. ROOS: Thank you, your Honor. And that concludes
24 my stipulation reading. Thank you, your Honor.

25 MR. SOBELMAN: The government calls Danielle Jones.

M5OVSHE2

Deperi - Direct

1 DANIELLE DEPERI,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 THE LAW CLERK: Please state and spell your name for
5 the record.

6 THE WITNESS: Danielle, D-A-N-I-E-L-L-E; Deperi,
7 D-E-P-E-R-I.

8 THE COURT: You may inquire.

9 MR. SOBELMAN: Thank you, your Honor.

10 DIRECT EXAMINATION

11 BY MR. SOBELMAN:

12 Q. Good morning.

13 A. Good morning.

14 Q. What is your legal name?

15 A. Danielle Deperi Jones.

16 Q. And do you go by Ms. Jones or do you go by Ms. Deperi?

17 A. I prefer Deperi.

18 Q. Okay. And what type of name is Deperi?

19 A. That is my maiden name.

20 Q. If you could pull the microphone just a little closer. I
21 just want to make sure everyone can hear you.

22 A. Yes, sir.

23 Q. Ms. Deperi, where do you live?

24 A. I live in South Carolina.

25 Q. What do you currently do for work?

M5OVSHE2

Deperi - Direct

1 A. Currently I'm a social media manager, I also do a little
2 writing, and I'm also a network marketer for Melaleuca.

3 Q. What is your educational background?

4 A. I graduated from high school and some college.

5 Q. Do you know someone named Timothy Shea?

6 A. Yes, sir.

7 MR. SOBELMAN: Ms. Drescher, could you please show the
8 witness what's been marked for identification as Government
9 Exhibit 281.

10 Q. Ms. Deperi, do you recognize the person in this photograph?

11 A. Yes, sir.

12 Q. Who is it?

13 A. Tim Shea.

14 MR. SOBELMAN: Your Honor, the government offers
15 Government Exhibit 281.

16 MS. CAPPELLINO: No objection.

17 THE COURT: It is admitted.

18 (Government's Exhibit 281 received in evidence)

19 THE COURT: If you would like to pull the microphone
20 closer to you, that's fine, if you're more comfortable. It's
21 movable.

22 THE WITNESS: Thank you.

23 MR. SOBELMAN: We can take down the exhibit.

24 Q. Ms. Deperi, how did you first become familiar with Timothy
25 Shea?

M50VSHE2

Deperi - Direct

1 A. I met Timothy Shea through his wife, Amanda Shea.

2 Q. And during the time period when you were in touch with the
3 Sheas, did Mr. Shea and Ms. Shea work together?

4 A. Yes. They at the time had a business with weapons, gun
5 holsters or some sort of business in that realm.

6 Q. How did you first meet Amanda Shea?

7 A. I met Amanda Shea when we both worked at a publication
8 called Mad World News.

9 Q. And what was Mad World News?

10 A. Mad World News was a news site that was published on mostly
11 news articles on online website and then published to Facebook.

12 Q. Approximately when did you first meet Amanda Shea?

13 A. Approximately 2012/2013, in that area.

14 Q. What was your role at Mad World News?

15 A. I was a writer.

16 Q. What was Amanda Shea's role at Mad World News?

17 A. A writer.

18 Q. Approximately when did you first meet Timothy Shea?

19 A. I believe it was January of 2017.

20 Q. Where did you first meet Mr. Shea?

21 A. Colorado, at their home in Castle Rock, I believe it was.

22 Q. When you say "their," do you mean Mr. Shea and Amanda Shea?

23 A. Yes, sir, at their residence.

24 Q. Why were you at the Sheas' home in January of 2017?

25 A. I was working at another publication and we were covering

M5OVSHE2

Deperi - Direct

1 Trump's inauguration from 2016 election.

2 Q. And what, if anything, were the others at Mr. Shea's home
3 doing at that time?

4 A. Lindsey Lowery, as well as Amanda Shea, and myself.

5 Q. And what were Ms. Lowery and Ms. Shea doing while you were
6 there covering the Trump inauguration?

7 A. They were both writers for Freedom Daily.

8 Q. And what is Freedom Daily?

9 A. Freedom Daily was another online news article, news site,
10 that most of the articles were published, as well as on
11 Facebook.

12 Q. And did you ever work for Freedom Daily?

13 A. Yes, I did. I eventually worked for Freedom Daily within
14 the first few months of 2017 I was hired on.

15 Q. Who owned Freedom Daily?

16 A. Brian Kolfage.

17 Q. Generally, who is Mr. Kolfage?

18 A. Brian Kolfage was a war veteran; he was triple amputee.
19 And he also did a lot of different news publications.

20 MR. SOBELMAN: Ms. Drescher, would you please show the
21 witness what's marked for identification as Government Exhibit
22 282.

23 Q. Ms. Deperi, do you recognize the person in this photograph?

24 A. Yes, sir.

25 Q. Who is it?

M5OVSHE2

Deperi - Direct

1 A. Brian Kolfage.

2 MR. SOBELMAN: The government offers Government
3 Exhibit 282.

4 MS. CAPPELLINO: No objection, your Honor.

5 THE COURT: It is admitted.

6 (Government's Exhibit 282 received in evidence)

7 MR. SOBELMAN: Ms. Drescher, we can take that down.

8 Q. Over the time that Freedom Daily existed, who, if anyone,
9 were Mr. Kolfage's business partners in that business?

10 A. Besides Brian Kolfage, Jeff Rainsworth, I believe, as well
11 as Brian Kolfage, Sr., and eventually Amanda Shea and Timothy
12 Shea.

13 Q. At approximately when did you start working at Freedom
14 Daily?

15 A. In 2017.

16 Q. What was your role with Freedom Daily?

17 A. I was a writer.

18 Q. When you worked at Freedom Daily, where were the articles
19 that you and other employees wrote published?

20 A. They were published onto the site and then pushed onto
21 different social media platforms such as Facebook, Twitter, and
22 other sites, I guess.

23 Q. What is your understanding of how Freedom Daily made money?

24 A. Through advertisements on the sites where they would
25 publish ads on there and they would be able to -- the

M5OVSHE2

Deperi - Direct

1 advertisers would then pay for them being able to see the ads
2 throughout the online site.

3 Q. How were you paid for your work with Freedom Daily?

4 A. I was paid per click, which usually is between \$1.50 to \$2
5 per 1,000 clicks.

6 Q. What was Amanda Shea's role at Freedom Daily?

7 A. Editor hired on as a writer, but eventually she would be
8 picking our stories and titling them.

9 Q. When did you stop working for Freedom Daily?

10 A. 2018.

11 Q. Why did you stop working for Freedom Daily?

12 A. I was given a ultimatum of --

13 Q. Could you please explain.

14 A. I was told that I was not -- if I wanted to continue
15 working there, I needed to not be friends with Lindsey Lowery
16 and have her stop talking to any news media about the Freedom
17 Daily and Brian Kolfage and what was going on at that site.

18 Q. And generally, what do you mean about what was going on at
19 that site?

20 A. The click bait headlines, as well as the titling, was very
21 salacious, very just misleading. And Lindsey was not pleased
22 with what was going on there and ended up leaving.

23 Q. So what was the choice that you were given by Freedom
24 Daily?

25 A. That either I stop my friendship with her and also have her

M5OVSHE2

Deperi - Direct

1 not talk to any news media, or I would lose my job or I
2 couldn't be there.

3 Q. Just to be clear, at that time Ms. Lowery was no longer
4 working at Freedom Daily?

5 A. Yes, sir.

6 Q. Does Freedom Daily still exist today?

7 A. No, it's defunct.

8 Q. Approximately when did Freedom Daily close?

9 A. Probably later on in 2018 approximately.

10 Q. What is your understanding of why Freedom Daily closed?

11 A. After Facebook came down with a lot of the crackdowns
12 having --

13 MS. CAPPELLINO: Objection, your Honor.

14 THE COURT: Overruled. You may answer.

15 A. Yes. After Facebook cracked down on a lot of the news
16 being pushed out onto fake news, so to speak, coming out there,
17 that the ads were lost, a lot of the revenue.

18 Q. I'm going to switch topics.

19 Are you familiar with a company called Winning Energy?

20 A. Yes, sir.

21 MR. SOBELMAN: One moment.

22 Q. Just to be clear, when you were given the ultimatum about
23 choosing to stay in the company or -- and terminate your
24 friendship with Ms. Lowery or leave the company, how was that
25 resolved?

M5OVSHE2

Deperi - Direct

1 A. I left.

2 Q. I'm now going to turn to the next topic.

3 Are you familiar with a company called Winning Energy?

4 A. Yes, sir.

5 Q. And how did you become familiar with Winning Energy?

6 A. Seeing online posts on Instagram, as well as on Facebook.

7 Q. And specifically, whose posts do you recall seeing?

8 A. I saw a post from Brian Kolfage, Amanda Shea, and as well
9 eventually Timothy Shea.

10 Q. And based on your review of Mr. Kolfage, Ms. Shea and
11 Mr. Shea's social media posts about Winning Energy, what do you
12 understand Mr. Shea's role to be with Winning Energy?

13 MS. CAPPELLINO: Objection.

14 THE COURT: Overruled. You may answer.

15 A. The CEO of Winning Energy.

16 Q. And just to be clear, what is Winning Energy?

17 A. It appeared to be an energy drink marketed towards more of
18 conservative patriotic leaning people with using Trump's
19 winning tag line, how he would say people were winning, America
20 was winning, using that tag line.

21 Q. Turning to another topic, are you familiar with a company
22 called Military Grade Coffee?

23 A. Yes, sir.

24 Q. And how did you become familiar with Military Grade Coffee?

25 A. Through Brian Kolfage, different ads, as well as tweets on

M5OVSHE2

Deperi - Direct

1 Twitter.

2 Q. These are posts that Mr. Kolfage made?

3 A. Yes, sir.

4 Q. Okay. And on what social media platforms do you recall
5 seeing posts about Military Grade Coffee?

6 A. On Facebook as well as Twitter.

7 Q. What is Military Grade Coffee?

8 A. Coffee that was just -- I believe just -- you know, just
9 regular coffee. I'm not too sure where it was -- the beans
10 were taken from, but it was used through like a veteran selling
11 coffee towards people.

12 Q. Is it a company that sells coffee?

13 A. Yes.

14 Q. And based on your review of the social media posts you
15 mentioned by Mr. Kolfage, what is your understanding of who
16 owned Military Grade Coffee?

17 A. Brian Kolfage.

18 Q. Turn to another topic.

19 Are you familiar with an organization called We Build
20 the Wall?

21 A. Yes, sir.

22 Q. What is We Build the Wall?

23 A. It was a crowdfunding crowd hedge fundraiser type thing
24 that was marketed on Facebook to gain donations to build the
25 wall on the southern border through private donations.

M5OVSHE2

Deperi - Direct

1 Q. How did you become familiar with We Build the Wall?

2 A. Saw it on Facebook as well as Twitter.

3 Q. And whose social media posts do you recall seeing about We
4 Build the Wall?

5 A. Brian Kolfage, Amanda Shea.

6 Q. And on what social media platforms do you recall seeing
7 those posts?

8 A. Facebook and Twitter.

9 Q. What, if anything, did you see in those posts regarding how
10 money donated to We Build the Wall would be spent?

11 A. That all of the funds would go towards the construction of
12 the wall.

13 Q. Do you recall seeing any posts about who, if anyone, at We
14 Build the Wall would be compensated or not compensated for
15 their work for We Build the Wall?

16 A. Could you repeat that again? I'm sorry.

17 Q. Yes. It's a little confusing.

18 Did there come a time when you saw posts about whether
19 Mr. Kolfage would be compensated for his work for We Build the
20 Wall?

21 A. All the posts that were written, as well as in the GoFundMe
22 page, said that he would not receive any money.

23 Q. And do you recall seeing those kind of statements just once
24 or more than once?

25 A. Multiple times.

M5OVSHE2

Deperi - Direct

1 MR. SOBELMAN: Ms. Drescher, can you please display
2 what's in evidence as Government Exhibit 951-A-1.

3 Q. Ms. Deperi, are you generally familiar with how public
4 posts appear on Twitter?

5 A. Yes.

6 Q. And what are those public posts called?

7 A. Tweets.

8 Q. Based on this exhibit, who posted this tweet?

9 A. Brian Kolfage.

10 Q. And on what date was this tweet posted?

11 A. January 12th, 2019.

12 Q. What is the blue writing at the beginning of this tweet?

13 A. Those are @ symbols. He's tweeting at several people.

14 Q. Just to be clear, it's a public post, but he's tagged to
15 these three other users?

16 A. Yes, three other users, I'm sorry.

17 Q. But anyone can see these posts, not just these three users;
18 correct?

19 A. Yes, yes.

20 Q. Could you please read the tweet starting with, Big
21 salaries?

22 A. Big salaries? It states in our bylaws I take zero dollars,
23 no salary, no compensation. Great investigative skills.

24 Q. Ms. Deperi, do you have an understanding of what this tweet
25 refers to?

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Deperi - Direct

1 A. An article that was -- that came out from BuzzFeed.

2 Q. And how did you become familiar with this article?

3 A. I was interviewed.

4 Q. You were interviewed for that article?

5 A. Yes.

6 MR. SOBELMAN: Ms. Drescher, can you please show the
7 witness what's been marked for identification as Government
8 Exhibit 401.

9 Q. Ms. Deperi, do you recognize this?

10 A. Yes.

11 Q. What is it?

12 A. The article that I was interviewed for through BuzzFeed.

13 Q. And it's the article that Mr. Kolfage was responding to in
14 that tweet?

15 A. Yes.

16 MR. SOBELMAN: The government offers Government
17 Exhibit 401.

18 MS. CAPPELLINO: We object, your Honor.

19 MR. SOBELMAN: Not being offered for its truth, your
20 Honor.

21 THE COURT: It's merely being offered for what
22 purpose?

23 MR. SOBELMAN: Your Honor, we mentioned -- it was
24 already mentioned in Mr. Gordon's testimony. Ms. Deperi will
25 discuss it. And it is proper to show context for Mr. Kolfage

M5OVSHE2

Deperi - Direct

1 and other co-conspirators' public and private statements that
2 they took many actions that are at issue in this case in
3 response to the allegations in this article. Without an
4 understanding of what the allegations are, subsequent actions
5 lack a certain context.

6 THE COURT: All right. So this article is not being
7 offered for the truth of what is said in the article. In other
8 words, it doesn't prove that something was true; it's being
9 offered to show how people responded to it, certain actions
10 that they may have taken.

11 It is admitted.

12 (Government's Exhibit 401 received in evidence)

13 MR. SOBELMAN: Thank you, your Honor.

14 Ms. Drescher, we can publish this to the jury.

15 Q. We're not going to go through the article now, but,
16 Ms. Deperi, can you just read the headline and the date on this
17 article?

18 A. I felt dirty: Former employees of the veteran crowdfunding
19 Trump's wall say he pushed fake news to get rich.

20 Q. What's the date and time this article was published?

21 A. January 10th, 2019 at 8:01 p.m.

22 Q. Ms. Deperi, do you know who's quoted in this headline?

23 A. Yes.

24 Q. Who was it?

25 A. Myself.

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Deperi - Direct

1 MR. SOBELMAN: We can take this down.

2 Ms. Drescher, can you please display what's in
3 evidence as Government Exhibit 953, and focus on the
4 third-to-last post on the page, please.

5 Q. Ms. Deperi, are you familiar with a Facebook account that
6 was known as We Fund the Wall and a couple other similar names
7 as of January 2019?

8 A. Yes, sir.

9 Q. And generally, based on your observation of its posts, what
10 was that Facebook account used for?

11 A. This was an account to publish information about the We
12 Build the Wall fund, as well as spreading the news of what was
13 going on at that time.

14 Q. What is the date on this Facebook post?

15 A. January 12th, 2019.

16 Q. Can you please read the post, starting with, Brian has.

17 A. Brian has stated he takes zero dollars salary, zero dollars
18 compensation, and it's in the bylaws.

19 MR. SOBELMAN: Ms. Drescher, can you please display
20 what's in evidence as Government Exhibit 951-A-2.

21 Q. Ms. Deperi, what's the date that this tweet was posted?

22 A. January 13th, 2019.

23 Q. Can you please read the tweet starting with, I'm the
24 president?

25 A. I'm the president and I'm taking nothing. Zero. Our board

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Deperi - Direct

1 is just a board. We cover travel expenses. It's a charity now
2 too, so we follow strict rules.

3 MR. SOBELMAN: Ms. Drescher, can you please display
4 what's in evidence as Government Exhibit 951-A-3.

5 Q. Ms. Deperi, what date was this tweet posted?

6 A. January 13th, 2019.

7 Q. Please read the tweet starting with, We promised.

8 A. We promised 100 percent of the funds raised on GoFundMe
9 only go towards border wall construction. We have an audit
10 committee who will verify this for everyone.

11 MR. SOBELMAN: Ms. Drescher, please display Government
12 Exhibit 954, and focus on the top half of the page.

13 Q. Ms. Deperi, what's the date of the video uploaded with the
14 ID number ending in 8596?

15 A. January 13th, 2019.

16 MR. SOBELMAN: Ms. Drescher, can you please display
17 Government Exhibit S-4 and focus on paragraph 4 on the second
18 page.

19 Government Exhibits 406 and 407 are true and accurate
20 screenshots of portions of the website for We Build the Wall as
21 of January 19th, 2019. Government Exhibit 407 -- sorry, I
22 think I'm looking at the wrong -- I said -- I may have said
23 S-4, but I meant S-6. I apologize.

24 Just focusing on the last sentence, it says:
25 Government Exhibit 954A is an authentic copy of a video that

M5OVSHE2

Deperi - Direct

1 was publicly posted on the Facebook page on January 13th, 2019,
2 which is contained in Government Exhibit 954.

3 Q. Ms. Deperi, did you watch Government Exhibit 954A in
4 preparation for your testimony today?

5 A. Yes, sir.

6 MR. SOBELMAN: And Ms. Drescher, can you just please
7 show the witness what's been marked for identification as
8 Government Exhibit 954A-T.

9 Q. Ms. Deperi, do you recognize this?

10 A. Yes, sir.

11 Q. What is it?

12 A. Transcript of the We Build the Wall video that was on the
13 Facebook page.

14 Q. And did you watch the video and compare this transcript to
15 what was said on the video?

16 A. Yes, sir.

17 Q. And is it accurate?

18 A. Yes, sir.

19 MR. SOBELMAN: The government offers 954A-T as an aid
20 to the jury.

21 MS. CAPPELLINO: No objection, your Honor.

22 THE COURT: It is admitted as an aid.

23 (Government's Exhibit 954A-T received in evidence)

24 MR. SOBELMAN: Ms. Drescher, can you please display
25 Government Exhibit 954A-T on one side of the screen and play

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Deperi - Direct

1 954A on the other.

2 (Video played)

3 MR. SOBELMAN: Ms. Drescher, can we now display what's
4 in evidence as Government Exhibit 951-A-4.

5 Q. Ms. Deperi, what date was this tweet posted?

6 A. January 13th, 2019.

7 Q. Can you please read the tweet, starting with, All money.

8 A. All money donated to the GoFundMe campaign goes directly to
9 wall, not anyone's pocket. We have audit committee for full
10 disclosure and oversight.

11 MR. SOBELMAN: Ms. Drescher, can you please display
12 what's in evidence as Government Exhibit 951-A-5.

13 Q. Ms. Deperi, what date was this tweet posted?

14 A. January 13th, 2019.

15 Q. Can you please read the tweet starting with, I thought.

16 A. I thought it was pretty clear. I made a promise that I
17 would never take a penny. 100 percent of fundraising through
18 @GoFundMe donations will only go towards the wall. 100 percent
19 means 100 percent, right? Board won't see any of that money.
20 Donations will be accountable by an audit committee as well.

21 MR. SOBELMAN: Ms. Drescher, please display what's in
22 evidence as Government Exhibit 951-A-6.

23 Q. Ms. Deperi, what date was this tweet posted?

24 A. January 14th, 2019.

25 Q. Please read the tweet, starting with, I want to point, and

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Deperi - Direct

1 ending with, Almost there.

2 A. I want to point this out, we say it a lot, but want to show
3 you a section of our corporate bylaws. Section 8.4:1, take no
4 salary whatsoever working on this project. It's completely
5 volunteer and it's how a nonprofit should be run. Project 2 is
6 coming on hot. Almost there.

7 MR. SOBELMAN: Ms. Drescher, please display what's in
8 evidence as Government Exhibit 956, and focus on the post from
9 Lisa Benz at the top of the page and the two comments under
10 that.

11 Q. Ms. Deperi, can a Facebook user make a public post or
12 comment on a page like We Build the Wall?

13 A. Yes.

14 Q. And does the person who operates the page on which the post
15 or comment is made then have the ability to respond?

16 A. Yes.

17 Q. And Ms. Deperi, on what date was the post by Lisa Benz
18 made?

19 A. January 15th, 2019.

20 Q. Please read what Ms. Benz wrote, starting with, Any chance.

21 A. Any chance of using some of these funds in some way for the
22 border patrol not being paid?

23 Q. On what date did We Build the Wall respond?

24 A. January 21st, 2019.

25 Q. Can you please read We Build the Wall's response, starting

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Deperi - Direct

1 with, We can't.

2 A. We can't. We have bylaws in place that state where money
3 can be spent and have an audit committee to oversee this.

4 Q. Can you now please read Ms. Benz's reply?

5 A. I understand. It is great that you will now keep things
6 private. I have the POTUS firm.

7 MR. SOBELMAN: Ms. Drescher, can you please display
8 what's in evidence as Government Exhibit 955, and focus on the
9 post in the middle that states it is from Joanne Thompson.

10 Q. Ms. Deperi, on what date was this post made?

11 A. January 16th, 2019.

12 Q. Can you please read Ms. Thompson's post beginning with,
13 Before I opt in.

14 A. Before I opt in for my prior donation, I'd like to know
15 more about the people running the organization. Are funds
16 going towards paychecks for them? I know Brian said he'd not
17 receive any money, but what about the others?

18 MR. SOBELMAN: Ms. Drescher, please now focus on the
19 post lower down on the page by Tim Shea.

20 Q. Ms. Deperi, on what date was this post made by Mr. Shea?

21 A. January 16th, 2019.

22 Q. Can you please read what Mr. Shea posted.

23 A. In its first month, We Build the Wall, Inc. has raised over
24 20 and a half million from 345,000. Opt in today.

25 MR. SOBELMAN: Ms. Drescher, now please display what's

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Deperi - Direct

1 in evidence as Government Exhibit 956 and focus on the last
2 post on the page.

3 Q. Ms. Deperi, could you please read the last three sentences
4 that Mr. Buice posted, starting with, Is your team?

5 A. Is your team working for free or do they get paid through
6 the funds raised? Now I have found this article. I donated
7 but now have second thoughts.

8 MR. SOBELMAN: Ms. Drescher, could you please display
9 what's in evidence as Government Exhibit 957 and focus on the
10 top three comments on the page.

11 Q. Can you please read what Casey Coughlin posted on January
12 20th, 2019, starting with Richard Buice: This is a scam.

13 A. Richard Buice: This is a scam. You are correct. These
14 people are paying themselves. They can't build shit. Like you
15 said, it's federal, state, private land. They can't possibly
16 do it. They don't have names or phone numbers or any
17 information. Scam.

18 Q. Can you please read what We Build the Wall posted on
19 January 21st, 2019, starting with, It's not scam?

20 A. It's not scam. Brian and his team are building the wall.
21 Brian is taking no salary and no compensation. We are working
22 with private landowners who want the wall. Anyone can build a
23 wall on their property if they want it. It's very simple
24 common sense approach.

25 MR. SOBELMAN: Ms. Drescher, please focus lower on the

M5OVSHE2

Deperi - Direct

1 page starting with the post by Fred Lybarger and including the
2 first three comments below that.

3 Q. Ms. Deperi, please read Mr. Lybarger's post on January
4 17th, 2019, beginning with, This started out.

5 A. This started out as a We Fund the Wall page where all
6 donations were actually going to build the wall. It later
7 became the We Build the Wall Corporation. When this started, I
8 donated to the We Fund the Wall page. Now it's my
9 understanding this money is going to pay for corporate wages
10 and employees and trips, etc., etc. I believe we had a little
11 bait-and-switch going on here.

12 Q. Please now read We Build the Wall's response posted on
13 January 21st, 2019, starting with, Brian is not taking.

14 A. Brian is not taking any salary or compensation. He's
15 building the wall and the money he's raising will get the wall
16 built faster than the government can.

17 MR. SOBELMAN: Ms. Drescher, please display what's in
18 evidence as Government Exhibit 951-A-7.

19 Q. Ms. Deperi, on what date was this tweet posted?

20 A. January 21st, 2019.

21 Q. Can you please read the tweet, starting with, Thank you,
22 and ending with, Company.

23 A. Thank you @MilGradeCoffee is how I support my family.

24 While I work on this wall project, remember I'm taking no
25 salary and no compensation. Please support my coffee company.

M5OVSHE2

Deperi - Direct

1 MR. SOBELMAN: Ms. Drescher, could you please display
2 what's in evidence as Government Exhibit 958 and focus on the
3 top of the page.

4 Q. Ms. Deperi, please read the post at the top of the page,
5 posted on January 12th, 2019.

6 A. I donated in December and again in January. And everything
7 looks great. However, one questions that has not been answered
8 in all the recent announcements: What are the salaries of all
9 these new advisors? How much of this donated fund will
10 evaporate into the salaries of all these new advisors? Please
11 post the salaries of each ASAP.

12 Q. Can you please read We Build the Wall's response posted on
13 January 21st, 2019, starting with, Brian is taking.

14 A. Brian is taking no salary or compensation. All the money
15 goes towards the wall and paying workers to build it.

16 MR. SOBELMAN: Ms. Drescher, can you please focus on
17 the post in the middle of the page by James Jones.

18 Q. Ms. Deperi, can you please read Mr. Jones's post made on
19 January 21st, 2019.

20 A. Yes, I know Brian is taking zero. But are all the recently
21 announced advisors taking zero, too? If not, their salaries
22 must be made public. Thank you for the response.

23 MR. SOBELMAN: Ms. Drescher, let's take a look at one
24 last exhibit. If you can go to Government Exhibit 951-A-9,
25 which is in evidence.

M5OVSHE2

Deperi - Cross

1 Q. Ms. Deperi, on what date was this tweet posted?

2 A. January 23rd, 2019.

3 Q. Can you please read the tweet starting with, I'm sad, and
4 ending with, Order now.

5 A. I'm sad to leave my day job as the cofounder of
6 @MilGradeCoffee. I'm donating 100 percent of my time to
7 building this wall and not taking any paycheck or compensation
8 from the money raised. My coffee biz is how I take care of my
9 family. Please check it out. K-cups and amp bags. Order now.

10 MR. SOBELMAN: Ms. Drescher, you can take this exhibit
11 down.

12 Q. Just a couple of additional questions, Ms. Deperi.

13 Did you ever do any work for We Build the Wall?

14 A. No, sir.

15 Q. Did you ever donate to We Build the Wall?

16 A. No, sir.

17 MR. SOBELMAN: No further questions.

18 THE COURT: Cross-examination.

19 MS. CAPPELLINO: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MS. CAPPELLINO:

22 Q. Good morning, Ms. Deperi. I'm Anjelica Cappellino. I'm
23 one of the lawyers that represent Mr. Timothy Shea.

24 You testified on direct that you met Mr. Shea's wife,
25 Amanda, in 2012/2013?

M5OVSHE2

Deperi - Cross

1 A. Yes.

2 Q. And did you two meet via social media?

3 A. Through social media, through Mad World News.

4 Q. Okay. And to clarify, around that time, to your knowledge,
5 they were living in Colorado right?

6 A. Yes, yes, ma'am.

7 Q. And you were living out of state?

8 A. Yes, ma'am.

9 Q. Did you ever meet in person around that time?

10 A. In 2012/2013, no.

11 Q. And you and Amanda Shea began working at Mad World News
12 publication together. That was a remote job, right?

13 A. Yes.

14 Q. So you didn't have any in-person contact with Amanda;
15 correct?

16 A. No, ma'am.

17 Q. Nor with Mr. Shea; correct?

18 A. No, ma'am.

19 Q. And then Mrs. Shea went over to Mr. Kolfage's site, as you
20 testified, Freedom Daily, and then you followed shortly
21 thereafter?

22 A. Yeah, a couple months later, I believe.

23 Q. And that was a remote job as well?

24 A. Yes, ma'am.

25 Q. And you never met Mr. Kolfage in person; is that correct?

M5OVSHE2

Deperi - Cross

1 A. Yes, ma'am, no.

2 Q. And you testified that you had some sort of falling out at
3 Freedom Daily?

4 A. Yes, ma'am.

5 Q. And in sum and substance, you chose to leave and Amanda
6 Shea chose to stay; correct?

7 A. Yes.

8 Q. And that would mean that Mr. Kolfage remained her boss,
9 right?

10 A. I believe so, yeah.

11 Q. Mr. Kolfage was the owner of Freedom Daily, right?

12 A. Yes.

13 Q. And Ms. Shea was the employee; correct? She worked for
14 Mr. Kolfage; correct?

15 A. I was -- it seemed that they were business partners.

16 Q. Do you have any personal knowledge of that?

17 A. From conversations with Amanda over the phone.

18 Q. And you testified on direct Mrs. Shea was an editor, right?

19 A. Mm-hmm.

20 THE COURT: Is that yes?

21 THE WITNESS: Yes. Yes. I'm sorry, your Honor.

22 A. Yes.

23 THE COURT: Thank you.

24 Q. Now, you went over to Freedom Daily in 2017, and you
25 mentioned Freedom Daily closed in 2018. So do you know when

M5OVSHE2

Deperi - Cross

1 you left?

2 A. Some time in the beginning of 2018. I'm not exactly --
3 exactly sure of the date.

4 Q. And when you leave, did you have any further communication
5 with Mr. Kolfage?

6 A. No.

7 Q. What about Mrs. Shea?

8 A. No, ma'am.

9 Q. Is it fair to say you two weren't -- or, excuse me, you
10 three weren't on speaking terms?

11 A. Yes.

12 Q. And then We Build the Wall was established in or around
13 December 2018, to the best of your knowledge?

14 A. To the best of my knowledge, yes.

15 Q. And you had mentioned you saw -- you learned about We Build
16 the Wall through social media posts?

17 A. Yes.

18 Q. And you learned about Military Grade Coffee, Mr. Kolfage's
19 company, through social media posts?

20 A. Yes.

21 Q. Twitter, correct?

22 A. Yes.

23 Q. Facebook?

24 A. Yes.

25 Q. And you also learned of Winning Energy, Mr. Shea's energy

M5OVSHE2

Deperi - Cross

1 drink company, through social media as well?

2 A. Yes, ma'am.

3 Q. So is it fair to say anything you know about those
4 companies you learned from social media?

5 A. Yes.

6 Q. Ms. Deperi, you're a professional writer by trade, right?

7 A. Yes, ma'am.

8 Q. And you're also known as a digital creator, is that fair to
9 say?

10 A. Yeah, yes, ma'am.

11 Q. For those of us who don't know, can you please explain what
12 a digital creator is.

13 A. Digital creator is to be able to post content on Facebook,
14 as well as maybe Instagram, or being able to -- original
15 content, I guess you could say.

16 Q. Your experience is mostly with posting about current events
17 with, say, a conservative lean, is that fair to say?

18 A. Yes.

19 Q. So like Mad World News, Freedom Daily, they target a
20 conservative audience?

21 A. Yeah, I could say that.

22 Q. Now, you mentioned you got paid per clicks about \$2 -- or
23 1.50 to \$2 per 1,000 clicks?

24 A. Yes, ma'am.

25 Q. So as a writer, is that fair to say it could be a lot of

M5OVSHE2

Deperi - Cross

1 money or a little money depending how good your articles are?

2 A. Yeah, that could be fair.

3 Q. So I'm assuming your goal is writing; you want to get as
4 many views and clicks as possible, right?

5 A. Yes.

6 Q. Okay. And you want to amass -- do you refer to them as
7 viewers or subscribers?

8 A. Followers. Do you mean reading the article or --

9 Q. Yes.

10 A. Okay. Yes, viewers, I guess, or to be able to read,
11 subscribers.

12 Q. And when you worked for Freedom Daily, for example, were
13 those viewers contacted via email blast or some way to get the
14 content?

15 A. Through Facebook, on a Facebook page the articles would be
16 posted.

17 Q. If we're talking about Facebook, you want as many Facebook
18 followers, is that the fair terminology to say?

19 A. Yes, as well as they would also be published onto a
20 website, but then they would be pushed. And when I say
21 "pushed," be posted onto Facebook.

22 Q. So you're across different platforms as a digital content
23 creator for Freedom Daily; correct?

24 A. For myself, no. I would write the story and then the --
25 whoever pushed that content, they would decide where it would

M5OVSHE2

Deperi - Cross

1 go. That was not on my decision basis.

2 Q. Got it.

3 And is the overall goal to have as wide an audience as
4 you possibly can?

5 A. I guess, yeah, that would be a fair assessment.

6 Q. And when we talk about audience, is there a value to
7 subscribers and followers?

8 A. On a Facebook page, no. There is no -- from my
9 understanding, there is no value to how many followers that you
10 have on a page in the monetary sense, just as a page growth.
11 You know, having that many, you know, so-called 1,000
12 followers, obviously can potentially see more of your content.
13 But that's only about one to five percent.

14 Q. And that can translate into monetary value if they click or
15 otherwise view an article, right?

16 A. If they click and view the article, but they also have to
17 view the article for a certain amount of time.

18 Q. What about ads? There's a certain amount of money in ads;
19 correct?

20 A. I believe so. But that was never what I was -- what I ever
21 worked on was on the ad. I know what ads are and I know how
22 they work, but I do not know how the money or any of that is
23 exchanged.

24 Q. To your knowledge, is there value in having contact
25 information for readers or followers?

M5OVSHE2

Deperi - Cross

1 A. If they want to subscribe by putting an email address, they
2 are able to capture so they could have that content delivered
3 straight to their email.

4 Q. And the more email addresses that are sent that content,
5 arguably, at least, the more viewers, right?

6 A. I would -- I would think so. Like I said, I was not on
7 that side.

8 Q. And to your knowledge, to your best estimate, can you
9 estimate the amount -- or withdrawn.

10 Now, you have your own social media sites; is that
11 correct?

12 A. Besides my Facebook page.

13 Q. You run a Facebook page?

14 A. Well, my Facebook profile. I don't have any pages, no.

15 Q. I'm sorry. To clarify, you're a Facebook user?

16 A. Yes, that's --

17 Q. And you post about your life?

18 A. Mm-hmm. Yes, ma'am.

19 THE WITNESS: Yes, your Honor. Sorry.

20 Q. And you share your opinions on things on Facebook?

21 A. At times, yes. Mm-hmm. Yes.

22 Q. And you posted about things related to this case; correct?

23 A. In the past, yes.

24 Q. Well, you posted about when law enforcement first contacted
25 you; correct?

M5OVSHE2

Deperi - Cross

1 A. Yes.

2 Q. And then you posted just a few weeks ago; is that correct?

3 A. Yes.

4 Q. You noted on Facebook that you would testify in this case,
5 right?

6 A. I said that I potentially -- that was at the time.

7 Q. Then the government asked you to take that post down,
8 right?

9 A. No, actually, I took that down.

10 Q. It's your testimony the government did not tell you to take
11 the post down?

12 A. No, the government did not tell me.

13 I took it down myself.

14 Q. Ms. Deperi, you mentioned you currently live in South
15 Carolina; correct?

16 A. Yes, ma'am.

17 Q. And you had a few meetings with the government starting in
18 April on this case?

19 A. I believe so, yes.

20 Q. How many times have you met with the government?

21 A. I would say a handful of times; a couple of Zoom meetings,
22 a few.

23 Q. And how did you get here today? Who paid for your travel?

24 A. I was flown out by the government.

25 Q. Do you recall the last time you spoke to Mrs. Shea?

M5OVSHE2

Deperi - Cross

1 A. Excuse me, who again?

2 Q. Amanda, Mrs. Shea, Amanda Shea.

3 A. Oh, I have not spoke to her in a few years now, at least
4 since 2018.

5 Q. Got it.

6 And just to clarify, you never worked for Mr. Shea,
7 right?

8 A. No, ma'am.

9 Q. And you never worked with Mr. Shea?

10 A. No, ma'am.

11 Q. You weren't particularly friendly with him; is that
12 correct?

13 A. I didn't know him personally, as friendly as with Amanda,
14 so no.

15 Q. And you only met him in person, I believe you testified,
16 once in January 2017?

17 A. Yes, ma'am.

18 MS. CAPPELLINO: No further questions. Thank you.

19 THE COURT: Redirect?

20 MR. SOBELMAN: No, your Honor.

21 THE COURT: You may step out.

22 (Witness excused)

23 THE COURT: And you may call your next witness.

24 MS. MOE: Thank you, your Honor.

25 The government calls Nicole Keller.

M5OVSHE2

Keller - Direct

1 NICOLE KELLER,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 THE LAW CLERK: Please be seated and state and spell
5 your name for the record.

6 THE WITNESS: Nicole Keller; N-I-C-O-L-E, K-E-L-L-E-R.

7 THE COURT: You may inquire.

8 MS. MOE: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MS. MOE:

11 Q. Good afternoon, Ms. Keller.

12 A. Good afternoon.

13 Q. Where do you live?

14 A. I live in Lancaster County, Pennsylvania, about an hour
15 west of Philadelphia.

16 Q. And where do you work?

17 A. I am a high school teacher. I teach at Ephrata High School
18 in Lancaster County.

19 Q. What do you teach there?

20 A. I teach 10th grade biology.

21 Q. What's your educational background?

22 A. I have a undergrad degree from Messiah College in biology
23 education, and a master's degree in educational leadership from
24 Edinboro University.

25 Q. Now, did there come a time when you learned about a

M5OVSHE2

Keller - Direct

1 fundraising campaign called We Build the Wall?

2 A. There did.

3 Q. About when was that?

4 A. It was late in 2018.

5 Q. And how did you learn about We Build the Wall?

6 A. Something that I had seen talked about on the news and on
7 the internet.

8 Q. And what do you remember learning about We Build the Wall
9 when you first heard about it on the news and on the internet?

10 A. There was a private citizen. He was an injured war vet,
11 and he was frustrated with the pace at which the wall at the
12 southern border was being completed. So he intended to raise
13 money to privately help complete the wall.

14 Q. Now, you mentioned that you learned that this was being
15 raised by a private citizen. Do you remember what that
16 person's name was?

17 A. Brian, I believe his last name is pronounced Kolfage.

18 Q. And when you learned about this, did this campaign have a
19 name?

20 A. We Build the Wall.

21 Q. What was your understanding at the time of how We Build the
22 Wall was raising money?

23 A. It was through the GoFundMe website. And he was requesting
24 that private citizens donate money to his campaign, and then he
25 was going to do what he could to build the wall at the southern

M5OVSHE2

Keller - Direct

1 border.

2 Q. And what is GoFundMe?

3 A. It's a website where you can start a campaign to raise
4 money for different causes. I've donated to people that their
5 house burned down in a fire, and it's to help them rebuild
6 their house, or maybe somebody loses a family member to help go
7 fund -- help fund their funeral, things of that nature.

8 Q. And did you visit the GoFundMe page for We Build the Wall?

9 A. I did.

10 Q. When you first visited the page, what was your
11 understanding of what the campaign was? What was it about?

12 A. That there was a private citizen, an injured vet. I was
13 kind of inspired by his patriotism. And he wanted to continue
14 to speed up the progress of building the wall at the southern
15 border.

16 Q. And when you visited the website, did you donate to We
17 Build the Wall?

18 A. I did.

19 Q. About how much did you donate?

20 A. I believe it was between 50 and \$100.

21 Q. And did you make your donation through the GoFundMe
22 website?

23 A. I did.

24 Q. Why did you decide to donate to We Build the Wall?

25 A. As a citizen of this country, I believe one of the roles of

M5OVSHE2

Keller - Direct

1 my government is to help protect the citizens. And one of the
2 ways that we do that is, just like my house, control who's
3 coming in and out. And that's easier to do with a wall at the
4 southern border.

5 I also am -- my late husband, Mark, was a border
6 patrol agent. He was -- he started his career in -- stationed
7 in the Rio Grande Valley sector of the border patrol. And he
8 was at the Harlingen Station. So we were about a half an hour
9 above the border. And at that point I was also a teacher. And
10 he protected the border, and I taught the kids that lived at
11 the border.

12 And at that point, Mark was fighting cancer and he was
13 forced to retire. At that point we had moved back up to
14 Pennsylvania at the northern border. But he was -- he was
15 fighting cancer, so it was a little bit personal, too, because
16 it's something that he had dedicated his career, and our lives
17 were committed to protecting the country.

18 Q. Directing your attention to January of 2019, did there come
19 a time that month when you received a notification from
20 GoFundMe?

21 A. Yes. Correct.

22 Q. And what do you recall about receiving a notification from
23 GoFundMe in January of 2019?

24 A. That the funds that had been donated to We Build the Wall
25 could not be used -- utilized directly through GoFundMe. And

M5OVSHE2

Keller - Direct

1 in order for Mr. Kolfage to access that money, we had to move
2 it to a different account. And I'm not a businessperson, but I
3 had to give my permission to move it to that account so he
4 could access the money.

5 Q. And did you end up giving your permission for that?

6 A. I did.

7 MS. MOE: Ms. Drescher, could we please publish what's
8 in evidence as Government Exhibit 306. Thank you.

9 Q. Do you recognize this?

10 A. I do.

11 Q. And what are we looking at here?

12 A. The GoFundMe web page for We Build the Wall.

13 Q. And have you seen this website before?

14 A. Yes.

15 THE COURT: Is that a yes?

16 THE WITNESS: Yes.

17 MS. MOE: If you could turn to page 4 and highlight
18 the second paragraph there.

19 Q. Do you recognize this?

20 A. I do. I especially remember the 100 percent portion made
21 an impression on me that I could donate in good faith.

22 Q. I'm going to talk about that a little bit more, but first
23 could you please read this paragraph for the jury?

24 A. 100 percent of the funds raised on GoFundMe will be used in
25 the execution of our mission and purpose. To honor the

M5OVSHE2

Keller - Direct

1 commitment we made to our donors, all funds raised, less the
2 processing fees and refunds, will be transferred to a special
3 purpose account to carry out the purposes and mission of We
4 Build the Wall, Inc. I will personally not take a penny of
5 compensation from these donations.

6 Q. Now, you testified just a moment ago that when you read
7 this paragraph, it had an impression on you. Can you explain
8 what you meant by that.

9 A. That Mr. Kolfage was committed to the project, to the
10 extent that he was guaranteeing that 100 percent of the money
11 would be used towards the cause. And he would not take a penny
12 of the compensation.

13 Q. And what was your reaction when you learned that that was
14 the promise the campaign was making?

15 A. It gave me confidence that he was going to do his best to
16 commit to this cause. It just made me feel like I could get
17 behind him.

18 Q. If you had known that this promise wasn't true, would that
19 have been a factor in your decision to donate?

20 A. Yes, it would have been a factor.

21 Q. At the time that you donated, and then when you gave
22 permission for the new campaign, had you ever heard of someone
23 named Timothy Shea?

24 A. No.

25 Q. Did any of the information on the campaign page tell you

M5OVSHE2

Keller - Direct

1 something about someone named Timothy Shea?

2 A. No. I only recall Brian's name.

3 Q. And did any of the information on the campaign page that we
4 just looked at tell you anything about We Build the Wall
5 spending money they were raising on an energy drink company?

6 A. No.

7 Q. Would you have donated to We Build the Wall if you'd known
8 that some of the money raised by the campaign would be given to
9 an energy drink company owned by someone named Timothy Shea?

10 A. No.

11 Q. Did there come a point in time when you became concerned
12 that We Build the Wall wasn't using donors' money properly?

13 A. There did. There was, yes.

14 Q. And why were you concerned about that?

15 A. It seemed like it was taking a long time to getting that --
16 the wall completed or started. And it just gave me some
17 concerns that my donation wasn't being used in the way that I
18 had intended it would be.

19 Q. And without getting into the substance of what you read,
20 did there come a time when you saw news articles online about
21 We Build the Wall that were negative?

22 A. Yes.

23 Q. Okay. And when you saw that, when you learned this, what,
24 if anything, did you do?

25 A. I went to the GoFundMe website to try to get my money back.

M5OVSHE2

Keller - Cross

1 Q. And why did you want your money back?

2 A. I had felt maybe that I was being scammed. And what I had
3 thought I had donated money to was not being used wisely.

4 Q. Thank you, Ms. Keller.

5 MS. MOE: Nothing further, your Honor.

6 THE COURT: Cross-examination.

7 MR. MERINGOLO: Very briefly.

8 CROSS-EXAMINATION

9 BY MR. MERINGOLO:

10 Q. Good afternoon, Ms. Keller. My name is John Meringolo. I
11 represent Timothy Shea.

12 Just a few questions, nothing -- so when did you
13 contact the government regarding testifying in this case?

14 A. I did not contact them; they contacted me.

15 Q. Do you know when they contacted you?

16 A. I believe it was about six months ago or so.

17 Q. Okay. And have you received your donation back?

18 A. I have not.

19 Q. Did the government tell you that they seized millions of
20 dollars and they would give you the donation back?

21 A. They did not.

22 Q. Are you aware that the government has seized millions of
23 dollars from the We Build the Wall account?

24 A. I am not.

25 Q. Okay. Now, you originally donated because Mr. Kolfage --

M5OVSHE2

Keller - Cross

1 at the time you donated, he had an inspiring story; correct?

2 A. That was part of the reason why I donated.

3 Q. He was a triple amputee?

4 A. Correct.

5 Q. And, you know, the most injured person ever to come out of
6 the Iraqi War, that was part of, like, what his bio was, do you
7 recall that?

8 A. I believe there's people that also gave their life.

9 Q. Oh, absolutely. But injured.

10 A. Injured. I was not aware of that. I do recall his picture
11 of him sitting in the wheelchair.

12 Q. I'm not trying to -- I'm just trying to ask you a few
13 questions. I apologize.

14 A. That's okay.

15 Q. And you said your late husband -- and I'm sorry -- was a
16 border patrol agent?

17 A. That's correct.

18 Q. Now, even though you're unhappy now about the \$100 that you
19 donated, and it's understandable, we all understand that. Were
20 you happy about the two walls that were built to help the
21 border patrol?

22 A. I was frustrated that the project was not completed as
23 described by Mr. Kolfage.

24 Q. Okay. But were you aware that the one border wall that
25 they did, the Army Corps of Engineers said it needed \$41

M5OVSHE2

Keller - Cross

1 million, our government said it needed \$41 million in two years
2 to build, and We Build the Wall did that in 17 days for \$6
3 million? Were you aware of that?

4 MS. MOE: Objection, your Honor.

5 THE COURT: I'm going to allow the question.

6 A. I had heard through the news media outlets that small
7 portions maybe of the wall were attempted; but the wall as
8 described on We Build the Wall's web page was not completed.

9 Q. Okay. Are you familiar with a gentleman by the name of
10 Khris Kobach?

11 A. I've never heard that name before.

12 Q. Thank you very much. I'm sorry. Thank you.

13 THE COURT: Redirect?

14 MS. MOE: No redirect, your Honor. Thank you.

15 THE COURT: You may step out.

16 (Witness excused)

17 THE COURT: The government may call its next witness.

18 MR. ROOS: Thank you, your Honor.

19 The government calls Special Agent Yves Hunziker.

20 YVES HUNZIKER,

21 called as a witness by the Government,

22 having been duly sworn, testified as follows:

23 THE LAW CLERK: Please be seated. State and spell
24 your name for the record.

25 THE WITNESS: Yves Hunziker. First name, Y-V-E-S;

M5OVSHE2

Hunziker - Direct

1 last name, H-U-N-Z-I-K-E-R.

2 THE COURT: You may inquire.

3 MR. ROOS: Thank you, your Honor.

4 DIRECT EXAMINATION

5 BY MR. ROOS:

6 Q. Good afternoon. Where do you work?

7 A. I work for the U.S. Attorney's Office, Southern District of
8 New York.

9 Q. What's your title there?

10 A. Special agent.

11 Q. How long have you been with the U.S. Attorney's Office?

12 A. A year and a half.

13 Q. Generally speaking, what are your duties and
14 responsibilities as a special agent with the U.S. Attorney's
15 Office?

16 A. I investigate criminal violations of the federal code.

17 THE COURT: Could you draw the microphone a little
18 closer to you, please.

19 Q. You can kind of like yank it also if you need to.

20 A. Okay.

21 Q. What did you do before the U.S. Attorney's Office?

22 A. I was a special agent at the IRS, criminal investigations
23 division.

24 Q. Okay. Now, so obviously many of us know what the IRS is,
25 but what does criminal investigations division do?

M5OVSHE2

Hunziker - Direct

1 A. They investigate criminal violations of the Internal
2 Revenue Code, as well as related financial crimes.

3 Q. All right. How long were you there?

4 A. Almost ten years.

5 Q. What sort of -- you don't have to go through your whole
6 résumé, but what sort of education and background and training
7 did you have before the IRS?

8 A. I graduated college, Babson College, in 2005, with a degree
9 in accounting. From there I went to KPMG, which is a Big Four
10 accounting firm, where I worked in the audit group. I then
11 moved into Forensics Group, doing consulting work, forensic
12 accounting, on the private side. From there I went --

13 THE COURT: What do you mean by forensic accounting?

14 Q. That was my question also.

15 A. Sure. We would get hired by companies. It's basically
16 looking back and trying to put together financial records a lot
17 of times for court purposes. From there I went to a small
18 consulting company that did hedge fund liquidation work. And
19 then after that I joined the IRS.

20 Q. All right. And I think you said it, but do you have
21 experience doing financial tracing, tracing out where money
22 goes?

23 A. Yes.

24 Q. Which of those jobs were you doing?

25 A. I would say all of them.

M5OVSHE2

Hunziker - Direct

1 Q. Let's talk about this case.

2 Have you ever heard the name Timothy Shea?

3 A. I have.

4 Q. And how did you become familiar with him?

5 A. When I was asked to review some exhibits for this trial.

6 Q. All right. So let me just ask a few background questions
7 about that.

8 Were you involved in the investigation of this case,
9 so before there were charges?

10 A. No.

11 Q. And what's your role been then as part of the case?

12 A. I reviewed a number of exhibits for accuracy by comparing
13 them to the supporting documentation.

14 Q. Did you create those exhibits?

15 A. No.

16 Q. Who created them?

17 A. The prosecution team.

18 Q. So what was your role then in preparing the exhibits or
19 charts?

20 A. I reviewed them for accuracy, I compared them to the
21 underlying supporting documentation. Most of it in this case
22 were bank records, financial records, wire transfers. There
23 was also text messages, emails, and some websites, for some of
24 the messaging and communications.

25 Q. Were you able to verify that all the information on these

M5OVSHE2

Hunziker - Direct

1 charts was drawn from an exhibit, piece of evidence?

2 A. Yes.

3 Q. We'll look at those charts shortly, but are the source
4 documents for those charts cited on the charts?

5 A. They are, yes.

6 Q. And with respect to bank records, what did you do to
7 prepare for your testimony today?

8 A. I reviewed the actual bank records that are in evidence; so
9 that includes the monthly statements, the copies of checks,
10 wire transfer detail, things of that nature.

11 Q. Roughly, how many pages are we talking of statements here?

12 A. There are a number of bank accounts; thousands of pages.

13 Q. And did you review emails in connection with the case?

14 A. Yes, I did.

15 Q. And just to be clear, did you review all the emails and
16 evidence collected with the investigation?

17 A. No, I did not.

18 Q. Okay. So just some sort of subset, is that right?

19 A. That's correct. The ones that were in the exhibits.

20 Q. All right. Special Agent Hunziker, do you have a copy of
21 what's been marked for identification as Government Exhibits
22 901, 902, 903, 904, 905, and 906 in front of you in the folder
23 there?

24 A. I do, yes.

25 Q. Okay. And what are these?

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Hunziker - Direct

1 A. These are the exhibits that are reviewed, the ones we were
2 just discussing.

3 Q. These are the ones that you verified the accuracy of?

4 A. Yes.

5 MR. ROOS: Government offers 901, 902, 903, 904, 905,
6 and 906.

7 MR. MERINGOLO: Hold on, Judge.

8 (Counsel conferred)

9 MR. MERINGOLO: Judge, we are going to object to 902;
10 and I'm going to request a voir dire on 901.

11 MR. ROOS: Your Honor, they have cross-examinations.
12 These are summary charts they've had for a few weeks. They
13 don't need a voir dire.

14 MR. MERINGOLO: I don't believe they are accurate.

15 MR. ROOS: Seems like that's something he can
16 cross-examine on. That goes to weight, not admissibility.

17 THE COURT: You can test the accuracy by questioning
18 the witness during cross-examination.

19 MR. MERINGOLO: Okay, Judge. So 902 we would object;
20 more prejudicial than probative. Various things.

21 MR. ROOS: Your Honor, it's a flow chart of financial
22 transactions.

23 THE COURT: If you'll step up, please.

24 (Continued on next page)

M5OVSHE2

Hunziker - Direct

1 (At sidebar)

2 MR. ROOS: Your Honor, first of all, let me just give
3 you a copy. You said 902, John?

4 MR. MERINGOLO: Yes, 902.

5 MR. ROOS: This is 902, just so your Honor can see
6 what the document is.

7 MR. MERINGOLO: It has all transactions in addition to
8 Mr. Shea, but other transactions that don't include Mr. Shea;
9 Steve Bannon, Citizens of America. They have the same
10 transactions from We Build the Wall to Mr. Shea, to Amanda,
11 back to Freedom Daily. But to have these is extremely
12 prejudicial. And they have it already here. Now we're going
13 to include Steve Bannon and all these other transactions. We
14 think it's improper. And I could ask Clara for the law.

15 MR. ROOS: As your Honor knows, Steve Bannon, the
16 other individuals in the chart are alleged to be part of the
17 conspiracy; they are part of We Build the Wall. The
18 government's charge in the indictment was that they laundered
19 money to Brian Kolfage through a series of shell entities.
20 These are them. These are all of them. These are the charts,
21 the ones alleged in the indictment. We're allowed to put on
22 evidence of a conspiracy.

23 They are free on cross-examination -- this, to me, is
24 all cross-examination points that the defendant isn't part of
25 this or isn't part of something else. They can make those

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Hunziker - Direct

1 points. That's obviously totally permissible
2 cross-examination. But there's nothing about this that is
3 unduly prejudicial to them; it's part of the alleged
4 conspiracy.

5 THE COURT: This is a conspiracy case. This evidence
6 is proper. And you can distinguish between those matters that
7 he was involved in, your client was involved in, and those that
8 he was not. So the objection is overruled.

9 MR. ROOS: Thank you.

10 Your Honor, while we're up here, can I just ask --
11 I've got about 30 minutes until the lunch break. Do you want
12 me to stop right at 1 or, if it's okay, I could say, you know,
13 sort of reach a natural stopping point. I can try to do it
14 shortly before 1, if that's good for your Honor.

15 THE COURT: That's fine.

16 MR. ROOS: All right.

17 (Continued on next page)

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Hunziker - Direct

1 (In open court)

2 THE COURT: Overruled.

3 MR. ROOS: Thank you. So 901 through 906, the
4 government offers, I understand are in evidence.

5 Let's start with Government Exhibit 904.

6 THE COURT: So it is admitted.

7 MR. ROOS: Thank you, your Honor.

8 (Government's Exhibits 901 to 906 received in
9 evidence)

10 BY MR. ROOS:

11 Q. Let's start with Government Exhibit 904. And Special Agent
12 Hunziker, can you explain what we're looking at here.

13 A. Yes. These are a number of text messages and emails and
14 some screenshots of websites between a number of participants.
15 They are numbered on the left there in chronological order.

16 Q. Okay. And so on this summary chart, there are various text
17 messages and emails you're saying?

18 A. Yes.

19 Q. And where are these messages drawn from?

20 A. If you look all the way on the right, GX on the top there,
21 they are drawn from, on this first page, the first one, GX 1,
22 and that's in evidence.

23 THE COURT: So what does that stand for, GX?

24 THE WITNESS: That was a number that I used to find
25 where it was in evidence.

M5OVSHE2

Hunziker - Direct

1 Q. "GX," government exhibit; is that right?

2 A. Right.

3 Q. GX 1 is Government Exhibit 1?

4 A. Yes, Government Exhibit 1. And that's where I would
5 compare the -- what you find in this chart to.

6 Q. So is this every email and text message that's in evidence?

7 A. No.

8 Q. Okay. And what time period generally do these texts and
9 emails in the chart relate to?

10 A. These are the beginning times of the GoFundMe page. So
11 it's the end of 2018, December 2018, and into 2019.

12 Q. And before we get into the substance, let me ask you a few
13 questions about the layout of the chart.

14 So first, are the materials organized in a particular
15 way?

16 A. Yes, chronologically.

17 Q. Okay. And so how do we read this chronologically?

18 A. From top to bottom, the numbers on the left there start at
19 1.

20 Q. Okay. And you just read down?

21 A. Yes.

22 Q. And you go to the next page?

23 A. Exactly.

24 Q. Can you explain what each of the columns are?

25 A. Sure. Column one is just the number of the text

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Hunziker - Direct

1 chronologically. The second column is the date and time.
2 Column three and four are the participants in the chart, from
3 and to. The fifth column is the message, so the statements
4 that were made. And that final column all the way on the right
5 is the government exhibit where these texts can be found.

6 Q. So what's the significance of the numbers in the left-most
7 column, the row numbers?

8 A. Those are the -- those are to be able to identify which one
9 we're discussing and they are also numbered chronologically.

10 Q. Okay. That's just mostly we can talk about which message
11 we're referring to?

12 A. Yes.

13 Q. Now, you testified this information comes from other
14 exhibits; is that right?

15 A. Yes.

16 Q. Where on the chart does it say, again, which exhibit it
17 comes from?

18 A. The column all the way on the right. GX is the government
19 exhibit.

20 Q. So let's just do an example. The first line has Government
21 Exhibit 1 on the right-most column.

22 MR. ROOS: Ms. Drescher, can you pull that up.

23 Q. This is in evidence. And Special Agent Hunziker, do you
24 see the text from the first line on the first chart on this
25 exhibit?

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Hunziker - Direct

1 A. I do.

2 Q. Okay. And let's zoom in on that and flip through this
3 exhibit. So it's three pages. And are various parts of this
4 text message incorporated into the chart?

5 A. Yes, they are.

6 Q. If the jury wanted to see the full source materials, is
7 this also in evidence?

8 A. It is.

9 Q. So you could look at the chart, you could look at the
10 source document; is that right?

11 A. Yes, they can.

12 Q. How do you know on this exhibit who's involved in this text
13 message exchange?

14 A. On the top there you can see the participants.

15 Q. Okay. And so who on this one, for instance, are the
16 participants?

17 A. This one, it's Mr. Brian Kolfage, Mr. Tim Shea, and
18 Ms. Amanda Shea.

19 Q. Okay. And --

20 THE COURT: Are you able to tell who is the sender and
21 who is the receiver?

22 THE WITNESS: Yes.

23 THE COURT: And how do you tell that?

24 THE WITNESS: In this column on the GX 1, that third
25 column has the "from."

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Hunziker - Direct

1 Q. And so then how do we know who it's to?

2 A. On the top it lists all the participants.

3 Q. So, for instance, on this one, if it says Brian Kolfage,
4 Tim Shea, Amanda Shea, and the message is from Brian Kolfage,
5 who are the other participants?

6 A. They would be Tim Shea and Amanda Shea.

7 Q. All right. So if the jury found it easier to look at the
8 summary chart -- well, that's in evidence too, right?

9 A. Yes.

10 Q. All right. So let's --

11 THE COURT: So are you saying that the owner is always
12 the sender?

13 THE WITNESS: No.

14 Q. Okay. So it's all three, but the sender could be any of
15 these people; is that right?

16 A. That's correct.

17 Q. And whoever is not the -- the two people who are not the
18 sender are the recipients of the message?

19 A. That's correct. And that's how the summary chart is
20 actually laid out.

21 Q. Okay. All right.

22 So let's go back to the summary chart. And on the
23 summary chart, how can we tell who the participants are on a
24 particular message?

25 A. In column three and column four, the "from" and the "to"

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Hunziker - Direct

1 list out the participants in that chart. And the "from" is who
2 sent this -- who sent the chat.

3 Q. Okay. Understood. Now we can zoom in on that.

4 And I asked you a few minutes ago about whether
5 multiple text messages from one of those exhibits were
6 incorporated into the chart. Take a look at the first six
7 messages. And what exhibit are those drawn from?

8 A. Those are from GX 1, the exhibit we just looked at
9 previously.

10 Q. So this is pulling a lot of material from GX 1. And then
11 we'll go to the next government exhibit; is that right?

12 A. Yes.

13 Q. Okay. Here's what I'd like to do: We're going to read
14 through this together. You're going to read the part -- you're
15 going to read the messages sent by Tim Shea and Amanda Shea.
16 I'll read the parts written by Brian Kolfage. If there are
17 different participants later on, we'll sort of pick out new
18 roles, okay. And I may ask you some questions along the way.
19 Okay?

20 A. Okay.

21 Q. All right. So let's start. And looking at the first
22 message on 904, that's from Brian Kolfage. So I'll read it.
23 It's on December 12th, 2018 at 7:08 p.m. And he writes to Tim
24 and Amanda Shea: I have a great idea that I stole. Let's
25 create a GoFundMe to pay for the Trump wall. And if Trump

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Hunziker - Direct

1 doesn't take the money, then we donate it to our organization.

2 And that comes from Government Exhibit 1.

3 A. Tim Shea replies at 7:14: That's so perfect.

4 Q. And then at 7:15, Brian Kolfage writes back to Tim and

5 Amanda Shea: It might be too difficult to fund entire thing,
6 but let's say fund a portion, like 400 million.

7 A. Tim Shea replies: Amanda, Trump can't take the money like
8 Kavanaugh couldn't, so we could transfer it.

9 Q. Brian Kolfage writes back, 7:15: We the people fund the
10 wall, create a website too.

11 A. A minute later Tim replies: Yaaaaass.

12 Q. Now, these are all from Government Exhibit 1 which we just
13 looked at.

14 Before we go any further, let me just ask you about
15 the context. Around this time in December 2018, what was going
16 on with the border wall?

17 A. President Trump was negotiating with Congress to get
18 funding for the border wall. In late December 2018, the
19 government shut down partly over those negotiations for
20 approximately 35 days.

21 Q. Okay. Got it.

22 And so on the fourth message, is it your
23 understanding, where it says, Trump can't take the money,
24 that's a reference to those efforts like whether or not Trump
25 could take the money from this GoFundMe?

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Hunziker - Direct

1 A. Yes, I think they had some experience regarding this with
2 Kavanaugh.

3 Q. All right.

4 THE COURT: What do you mean by "Kavanaugh"?

5 THE WITNESS: They had set up a GoFundMe, or some
6 folks did, that I believe Brian Kolfage was participating with.
7 And they wanted to raise money for the Supreme Court Justice.
8 And I think there were some issues about actually how to
9 transfer that money to him.

10 BY MR. ROOS:

11 Q. Okay. Let's look at the next message, which is number 7 on
12 this. And since it's Brian Kolfage, I'll read it. Now, this
13 is from a different exhibit and a different date. So this is
14 December 16, 2018 and 11:17 p.m. Brian Kolfage writes to Tim
15 Shea and Amanda Shea: Hi everyone. Please click here to
16 support my GoFundMe campaign. We the People will fund the
17 wall.

18 And then the next message at 11:28, on the same day
19 from the same exhibit, he sends -- he texts the link
20 GoFundMe.com/TheTrumpWall.

21 And then can we go to the next page. So then this is
22 on December 17th, 2018 at 9:52 a.m. Brian Kolfage texts Tim
23 and Amanda Shea again from the same exhibit an image.

24 So let me ask you, what does this image appear to be?

25 A. This appears to be the GoFundMe page. It states: We the

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Hunziker - Direct

1 People will fund the wall. And it has a picture on the left of
2 President Trump.

3 Q. Okay. And why don't you read the next message?

4 A. At 9:55 a.m., Amanda Shea writes: Looooooooovvee.

5 Tim Shea a minute later writes: That is perfect.

6 Amanda Shea replies: Let's get it on our Twitters.

7 Q. All right. By the way, before I read the next message, let
8 me ask you, what's your understanding of where these materials
9 came from, these text messages?

10 A. I believe they came from search warrants.

11 Q. Okay. On various cell phones?

12 A. On cell phones, yeah.

13 MR. ROOS: And Ms. Drescher, could we move away from
14 this exhibit for one second and look at S-7. And scroll down.

15 Q. And Special Agent Hunziker, you see that this references
16 various exhibits we're looking at and indicates they came from
17 phones and computers belonging to Tim Shea, Amanda Shea, Brian
18 Kolfage, and Stephen Bannon that were seized pursuant to
19 court-authorized search warrants? Do you see that?

20 A. Yes.

21 Q. All right. Let's go back to the exhibit. And we're
22 picking up at number 13. Again, this is all still just from
23 Government Exhibit 2.

24 And Brian Kolfage writes to Tim and Amanda Shea: Do
25 you have a P.O. Box?

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Hunziker - Direct

1 A. Amanda replies: No, but we keep meaning to set one up.
2 Tim can do it today if we need one.

3 Q. Okay. And on the next page, line 15, Brian Kolfage writes
4 back to Tim and Amanda Shea: People want to send checks?

5 A. Amanda replies: Who uses checks anymore? We'll set one up
6 today.

7 Q. And Brian Kolfage responds, line 17: Old people.

8 A. Amanda replies: I can't wait to see where it ends up by
9 the end of the day.

10 Q. Brian replies a minute later: We need media on it.

11 A. Amanda replies: Tim and I will focus on the articles if
12 you want to do the emailing. I'll post them on Joe, too.

13 MR. ROOS: Okay. Can we just bring up Government
14 Exhibit 2 for one minute. Can we just scroll through it.

15 Q. Special Agent Hunziker, all the messages we've been reading
16 for the last few minutes have come from this exhibit,
17 Government Exhibit 2, right?

18 A. Yes.

19 Q. All right. And this is in evidence, right?

20 A. Yes.

21 Q. So folks could review it if they want?

22 A. Yes.

23 Q. Okay. Let's go back to 904. All right. And we'll pick up
24 now on line 21, which is pulling from the third exhibit.

25 So line 21, Brian Kolfage says to Tim and Amanda Shea

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Hunziker - Direct

1 on December 17, 2018 at 1:35 p.m.: I updated the GoFundMe mr.

2 A. Amanda replies: Also, do you want there to be in fine

3 print that a percentage goes to us to cover the legal, etc.?

4 Q. Okay. And Brian Kolfage writes back to that: No. No fine

5 print. We'll get so much from it already.

6 So then this is later that day at 10:38 p.m., Brian

7 Kolfage writes to Tim and Amanda Shea: Will hit 30K.

8 That's from Exhibit 4.

9 A. Right.

10 Q. And then do you see line 25, there's an entry from GoFundMe

11 on December 18, 2018?

12 A. Yes.

13 Q. And first, why don't you just read what's in the box about
14 that?

15 A. We the People will fund the wall. GoFundMe page says 100
16 percent of your donation also go to the Trump wall.

17 Q. Okay. And that comes from Government Exhibit 301, which
18 the jury may have seen.

19 MR. ROOS: Why don't we just put up 301. And can we
20 scroll down to where that statement came from.

21 Q. So that's a statement that's on your chart, right? This
22 came off of the GoFundMe page?

23 A. Yes.

24 Q. All right. Let's go back to 904.

25 So this is basically just like a chronology, right,

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Hunziker - Direct

1 for the early days that we're walking through?

2 A. Right. From the end of December 2018.

3 Q. Okay. So then line 26, which is that same day as that
4 GoFundMe page, Brian Kolfage says to Tim and Amanda Shea: 40K.
5 And what's that -- that's like a reference to how much money
6 they've raised?

7 A. I believe so, yes.

8 Q. And what's the next message?

9 A. Tim Shea replies: Holy shit.

10 Tim Shea then writes: I mean, people are crazy. Who
11 would throw money at something like this at Christmastime?

12 Q. Okay. And then Brian Kolfage says in response to that,
13 like 40 minutes later: Let's do a lot of posts today.

14 Is your understanding he's referring to social media
15 posts?

16 A. I believe that's what it is, yes.

17 Q. And then he says again to Tim and Amanda Shea at the same
18 time: We gotta start making more money.

19 And then I guess my turn again. December 18th, 2018,
20 later that morning he writes: Donations rolling in.

21 A. At 10:46 a.m., Amanda Shea replies: More on fire today
22 than yesterday.

23 Tim Shea replies: Christmas bonus?

24 Q. Brian Kolfage then writes that evening -- that was in the
25 morning, so the evening: 200!!! Ours is full-blown viral.

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Hunziker - Direct

1 What do you understand "viral" to mean?

2 A. I believe when something goes viral, the speed that it
3 moves around, in this case something on the internet.

4 Q. So it's kind of like newsy on the internet, people are
5 excited about it or it's caught on?

6 A. Yeah, there's a lot of attraction.

7 Q. All right. Line 36 is December 19. Brian Kolfage writes
8 to Tim and Amanda Shea: I need that P.O. Box. And he writes:
9 I have hundreds wanting to mail checks.

10 A. Tim Shea replies: I went over to set it up on Monday, and
11 the line was out the door to ship shit. They open at 8:30 this
12 morning. I'll set it up then.

13 Q. Set it up, the P.O. Box?

14 A. That's what I believe it's a reference to, yes.

15 Q. Brian Kolfage writes to Tim and Amanda Shea:
16 Gofundthewall.com is open.

17 A. At 8:41 Tim Shea replies: It might make it to 1b.

18 Q. And Brian Kolfage responds on the same chat: Question is
19 do we make this an org?

20 A. Amanda Shea replies: I think org.

21 Q. So what do you understand "org" to be in this context?

22 A. An organization.

23 Q. Okay. Brian Kolfage writes: What's Tim email? I need to
24 add him to GF as a team member, if that's okay.

25 And let me -- before you get the next message, let me

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Hunziker - Direct

1 ask, what do you understand "GF" to be a reference to?

2 A. GoFundMe.

3 Q. Go ahead. You can read the next message.

4 A. Tim Shea replies: Timshea.realestate@gmail.com.

5 Q. Okay. And then about 30 minutes later, Brian Kolfage texts
6 Tim and Amanda Shea again: Over 500K.

7 So at this point he's basically updating them on the
8 donation numbers?

9 A. That's what I think it is, yes.

10 Q. All right. Why don't you read the next message, line 46.

11 A. At 11:09 a.m. Tim Shea writes: Our new mailbox, 4833 Front
12 Street, Unit B-158, Castle Rock, Colorado, 80104.

13 Q. And line 47?

14 A. Tim Shea writes at 11:46 a.m.: People here in our city are
15 arguing if you live here in Castle Rock. They see the GoFundMe
16 address. And there's a screenshot from a Fox 31 news article.
17 And the article title is GoFundMe to Build Trump's Border Wall
18 Raises More Than \$3.5 million in Three Days. And the person
19 who screenshotted that writes: This guy lives in Castle Rock.

20 Q. I just want to be sure everyone is following on this part.
21 So the last message is an address, and then there's this
22 screenshot, and then a message connected to it. So can you
23 explain what's happening here?

24 A. Yeah. I think what's going on is that there's -- there's
25 some discussion on Facebook on Mr. Brian Kolfage lives in

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Hunziker - Direct

1 Florida, and the address for the GoFundMe is in Castle Rock,
2 Colorado. So I think there's some arguments about why that is.

3 Q. Okay. Let's read the next message now, line 48, the one
4 after this one.

5 A. At 11:56 a.m. Tim Shea writes: We may have to do some
6 damage control. Eventually people will question the legitimacy
7 of the GoFundMe account when you are in Florida, but the
8 GoFundMe address in Castle Rock, Colorado.

9 Q. So people are -- your understanding is people are asking
10 what's up with this, is it legitimate, since the address is in
11 Colorado?

12 A. Yeah. I think the public is trying to just wrap their
13 hands around it.

14 Q. All right. Line 49, Brian Kolfage says to Tim and Amanda
15 Shea: I can say I run a business there. We are partnered. So
16 I do.

17 And let me just stop there.

18 This message I just read is on December 20th. Based
19 on the materials you've looked at up through this date, what's
20 your understanding of what the plan was with respect to the
21 GoFundMe?

22 A. The plan was to raise the funds and then give the funds to
23 the government, for the government to then build the wall along
24 the border.

25 Q. Okay. And then the next message on this line 50, before I

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Hunziker - Direct

1 read it, is a week later, is that right?

2 A. Yes.

3 Q. So why don't I'll read the message, and then I'll ask you a
4 question about it.

5 So line 50 is a week later, December 27, 2018. And
6 Brian Kolfage on this one texts just Tim Shea: Plan: We are
7 building wall. We. Physically us. We are bypassing
8 government. It will be symbolic to get the real wall support.
9 After we get this corp. set up, I'll call you. We are setting
10 up an office in Florida. Will be in my area since they are
11 doing the c4 in Florida.

12 So first let me ask you, what's your understanding of
13 what the new plan was?

14 A. The new plan was to pivot from funding the wall and
15 providing those funds to the government to actually raising the
16 funds and then building the wall themselves.

17 Q. And there's a reference in here to c4. Do you have an
18 understanding of what that's a reference to or what a c4 is?

19 A. I believe that's in reference to a 501(c)(4), which is a
20 nonprofit designation by the IRS.

21 Q. So it's like an organization or an entity that you would
22 set up pursuant to the IRS code?

23 A. Yes.

24 Q. Why don't you read line 51.

25 A. At 6:12 p.m. Amanda writes: For the article of

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Hunziker - Direct

1 incorporation, I want to be listed as an officer or both Tim
2 and I listed as officers.

3 Q. Okay. And line 52, Brian Kolfage writes to Tim and Amanda
4 Shea: That was Steve's plan. I told him you guys are
5 partnered with me. He wanted to give you guys a different
6 title, like president or something. You won't be left out.

7 And let me pause there for a second. There's a
8 reference to Steve. From your involvement in this
9 investigation, do you know who that is?

10 A. I believe that is Steve Bannon.

11 MR. ROOS: And can I show just the witness what's been
12 marked for identification as Government Exhibit 284.

13 Q. Do you recognize this?

14 A. I recognize the individual, yes.

15 Q. And who is it?

16 A. Steve Bannon.

17 MR. ROOS: Government offers 284.

18 MR. MERINGOLO: No objection.

19 THE COURT: It is admitted.

20 (Government's Exhibit 284 received in evidence)

21 MR. ROOS: May we publish to the jury?

22 THE COURT: Yes.

23 Q. All right. Special Agent Hunziker, the jury hadn't seen
24 the picture when I asked you the question, so let me ask you
25 now, who is this?

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Hunziker - Direct

1 A. Steve Bannon.

2 Q. Okay.

3 MR. ROOS: We can take that down.

4 Q. Let me ask you though, what was Steve -- or who is Steve
5 Bannon?

6 A. Steve Bannon was a campaign manager for Donald Trump's run
7 for president; and then later was a senior adviser in President
8 Trump's White House.

9 Q. Okay. Let's go back then to 904, the chart. And we'll
10 pick up the next message, which is line 53.

11 A. Tim Shea writes: We know that. We trust you.

12 Q. So that's a response to the prior one that says: I told
13 him you guys are partnered with me. He wanted to give you guys
14 a different title, like president or something. You won't be
15 left out.

16 A. Yes.

17 Q. All right. So then the next message, line 54, is between
18 different people, right?

19 A. Yes, these are different participants.

20 Q. So let's look at Government Exhibit 16. So this is on the
21 timeline, but it's from a totally different text message
22 exchange; is that right?

23 A. Yes.

24 Q. Okay. And who is this text message exchange between?

25 A. The participants, as you can see on top, are Andy Badolato

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Hunziker - Direct

1 and Steve Bannon.

2 Q. We just talked about Steve Bannon.

3 Who's Andy Badolato?

4 A. Andy Badolato is a business associate of Steve Bannon's.

5 Q. Okay. And so why don't we -- there's seven messages on
6 this and some of them appear on the timeline chart. Why don't
7 we go back to that, Government Exhibit 904. And for this, on
8 line 54, why don't you read messages from Andy Badolato and
9 I'll read any messages from Steve Bannon, if there are any.

10 A. Okay. On December 30th, 2018 at 12:55 p.m., Andy writes to
11 Steve Bannon: I got Brian to agree to the following that will
12 be disclosed in the GoFundMe deal and the most talked about
13 media narrative ever. He will not be paid a dime and get a
14 bonus milestone when the wall starts and when it's finished.
15 Lol yugge. But we gotta find an end around to get him stuff
16 and something soon.

17 Q. All right. Let me ask you about -- a few questions about
18 this statement. So he says he got Brian. Who do you
19 understand Brian to be a reference to?

20 A. Mr. Kolfage.

21 Q. He got Brian Kolfage to agree to the following that will be
22 disclosed as part of the GoFundMe deal. And then there's the
23 next sentence, which says: He will not be paid a dime and get
24 a bonus milestone when the wall starts and when it's finished.

25 So let me break that part in half. Did you see -- in

M5OVSHE2

Hunziker - Direct

1 the materials you reviewed, have you seen other materials that
2 reference that Brian Kolfage will not be paid a dime?

3 A. Language similar to that, yes.

4 Q. Is that stuff that comes after this date, December 30th, so
5 like later public statements?

6 A. Yes.

7 Q. And what about this other part though, did you ever end up
8 seeing anything where they end up saying he's going to get a
9 bonus?

10 A. This is the only reference that I saw to any sort of bonus.

11 Q. And just to be clear, this one is not a public statement
12 made to donors, right?

13 A. No, this is a message between Andy Badolato and Steve
14 Bannon.

15 Q. Okay. And then he says: Lol yugge. And then the last
16 sentence: But we've got to find an end around to get him stuff
17 and something soon.

18 A. Right.

19 Q. All right. Okay. Let's move on then to message 55.

20 And who's this exchange between?

21 A. So this one goes back to the participants being Tim Shea,
22 Amanda Shea, and Brian Kolfage. On January 9th, 2019 at 9:22
23 a.m., Tim Shea writes: Boom. Thursday is still announcement
24 day?

25 Q. Okay. And then what's the next message?

M5OVSHE2

Hunziker - Direct

1 A. On January 11th, 2019, there's a BuzzFeed article. I felt
2 dirty: Former employees of the veteran crowdfunding Trump's
3 wall say he pushed fake news to get rich.

4 Q. The jury has seen this one. Put it up on the screen, 401.
5 This is the BuzzFeed article?

6 A. Yes.

7 Q. Okay.

8 MR. ROOS: We can take that down.

9 Q. So the next message is line 57. And since I'm reading for
10 Stephen Bannon, Stephen Bannon says to Andy Badolato: BuzzFeed
11 working with GoFundMe you can tell.

12 And can you read the response?

13 A. Sure. Andy responds to Steve Bannon: I'm working on press
14 release. I think a strict bylaw review. And in the press
15 release Brian says not a penny will go to him at all; and he
16 says a private donor has agreed, reached out to compensate him
17 directly as milestones are reached. That removes all
18 self-interest taint on this. All money goes to wall. It gives
19 Brian sainthood and reputes the articles as haters. Go build
20 the wall donations, GoFundMe. He is willing to do that.

21 Q. All right. Let me ask you a few questions about this.

22 So Badolato says he's working on a press release.

23 Do you see that?

24 A. Yes.

25 Q. And he says: And the press release should say Brian is not

M5OVSHE2

Hunziker - Direct

1 taking a penny.

2 Who do you understand "Brian" to be a reference to?

3 A. Mr. Brian Kolfage.

4 Q. It says: He won't take a penny and that a private donor
5 would compensate him.

6 Did you see in the course of review of public
7 materials, materials that said Brian Kolfage wouldn't take a
8 penny?

9 A. Yes.

10 Q. But did they end up ever saying that a private donor would
11 compensate him?

12 A. Not in my review, no.

13 Q. Not in your review of any public statements?

14 A. Right.

15 Q. All right. It says it removes all self-interest taint.

16 What do you understand that to be a reference to?

17 A. I believe, and with this article that there was -- there
18 are people discussing how much the administrators like Brian
19 Kolfage would take in this fund raise. And so I think this was
20 an effort to make it show that he wasn't going to take any
21 money from this -- from this effort.

22 Q. Okay. Now, a few minutes ago you read a statement that
23 said you have to find Brian Kolfage an end around. Do you
24 remember reading that?

25 A. Words like that, yes.

M5OVSHE2

Hunziker - Direct

1 Q. Right up here, line 54, but we got to find an end around to
2 get him stuff and something soon.

3 A. Yes.

4 MR. ROOS: Why don't we scroll down to line 59.

5 THE COURT: And if you could wrap up, please.

6 MR. ROOS: I'll do this last one and wrap up for
7 lunch.

8 Q. Line 59, what does Steve Bannon say to Andy Badolato in
9 response to this?

10 A. COAR can pay him.

11 Q. What do you understand COAR to be a reference to?

12 A. That's Steve Bannon's nonprofit company Citizens of the
13 American Republic.

14 Q. Okay. So he says Brian will say he's not taking a penny,
15 and Steve Bannon says his nonprofit can pay him?

16 A. Right.

17 MR. ROOS: All right. Why don't we break there, your
18 Honor, if that's okay.

19 THE COURT: All right, then.

20 You may step down.

21 Members of the jury, it's now 1:02. We will resume at
22 2:02. So I'll need for you to be outside the courtroom and
23 ready to walk in at that time.

24 Remember that you're not allowed to discuss this case
25 amongst yourselves or with anyone else. Don't allow others to

M5OVSHE2

Hunziker - Direct

1 discuss the case in your presence.

2 Have a good lunch.

3 (Jury not present)

4 THE COURT: Is there anything you wanted to raise
5 before we take our lunch?

6 MS. MOE: Not from the government, your Honor.

7 Thank you.

8 MR. MERINGOLO: Not from the defense, Judge.

9 THE COURT: All right. We'll resume at 2:02.

10 (Luncheon recess)

11 (Continued on next page)

M5o3she3

AFTERNOON SESSION

1:55 p.m.

(In open court; jury not present)

THE COURT: You may be seated. I understand that you wanted to raise some issues.

MR. ROOS: One, for starters, your Honor, so there is an exhibit Government Exhibit 29, it is in evidence. Basically there is some I guess off color, defense says they're off color comments in the exhibit that they'd like redacted. We had tried to truncate the exhibit.

THE COURT: What type of nature?

MR. ROOS: It is a text exchange. I'll pass it up to your Honor.

So, we had tried to cut part of the exhibit just to at least partially solve the issue. Mr. Meringolo then referenced parts of the exhibit we had cut. We don't care if it is cut or not. We had to go back because he used parts that were in opening that we had thought were going to be cut. Now I think they probably have to come into the case.

So, as a result, that's why we're raising this redaction issue with your Honor now. There is a few messages that defense counsel wants redacted. I think maybe since it is their objections, they could just list the line number and we'll tell you if we are okay with redacting or else what our view of why the statement is relevant if that works for

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1 everyone.

2 MS. CAPPELLINO: We're starting with the old --

3 MR. ROOS: Do you need a copy?

4 MS. CAPPELLINO: Thank you.

5 We just ask that anything regarding race, sexual
6 orientation, any off colored language about people or where
7 they're from. So, for example, on this 29, it starts with line
8 12, we ask that be redacted. They are talking about people by
9 the border they don't trust crackers. That's an off color
10 remark. The people we're dealing with won't trust the Mexican.

11 THE COURT: Are you challenging the accuracy?

12 MS. CAPPELLINO: No, your Honor. We just think it is
13 off color and based on -- based on a 403 analysis. With the
14 epithets and what it references, we think it is off color and
15 it would be way more prejudicial than probative. We think it
16 can be redacted without affecting the overall message or
17 interpretation of the string of texts. So that would be our
18 argument. It goes throughout the exhibit as well.

19 THE COURT: So you can't agree on what should be
20 redacted?

21 MR. ROOS: So basically, your Honor, this is a chat
22 between the defendant and his co-conspirators, so, sort of like
23 they made these statements, I mean, if they are substantively
24 irrelevant, we'll give them the redactions and I think
25 Ms. Cappellino e-mailed us some and we're fine with them. I

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1 don't have the numbers off the top of my head, but if she wants
2 to call them out, we can say yes or no or we can work it out.
3 There is maybe a few where we think, even though it's
4 insensitive for some reason, it is still substantively
5 relevant. Like so for those --

6 THE COURT: Why don't we talk about the ones that are
7 in contention.

8 MR. ROOS: Great.

9 MS. CAPPELLINO: I believe that's line 67 through 69.
10 Those are the ones we objected to and I believe the government
11 wants to keep those in.

12 MR. ROOS: I believe there is one before that also.

13 THE COURT: 67 to 69?

14 MR. ROOS: They also objected to 41.

15 THE COURT: Line 67, Mr. Kolfage allegedly said too
16 bad you're not disabled. Then again in 68 he says and black.
17 And in 69 and a woman.

18 And the prosecution feels this is relevant because?

19 MR. ROOS: Starting on line 54, actually 53, Kolfage
20 says if it came out we hired ourselves, it would be bad. And
21 the defendant says we need to create companies that I hired
22 you, I'm paying you for a service consulting. Kolfage says,
23 part of me says do it, but I am not sure if Steve would let it
24 fly. He says Pitch Fork is actually legitimate. Then he says,
25 the defendant says, but the transfers this between me and you

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1 if you own -- then Kolfage says, if you own a construction
2 firm, and can do it for cheap, by golly fist bump. The
3 defendant says, yeah we need to talk through this. And Kolfage
4 says too bad you are not disabled and black and a woman go to
5 Detroit. Find one. The defendant says if 600K comes in and I
6 transfer you 300K. Kolfage says, yeah, that's legit.

7 So the relevance is that they are basically talking
8 about, like, we need to create a company through a shell
9 company through which we can send the money. And Kolfage is in
10 a joking way saying this would be so much easier if you were
11 black and disabled and lived in Detroit because it would give
12 us sort of like a cover. But, you're not.

13 So that's the context.

14 THE COURT: But he's implying that if you fit a
15 certain demographic, you would be treated more favorably by
16 whom?

17 MR. ROOS: I guess whoever is, like, looking to detect
18 these things.

19 THE COURT: In other words, that the demographic
20 information gives some greater legitimacy.

21 MR. ROOS: If it was a minority. He is jokingly
22 suggesting if it was a minority owned business, it would be
23 treated -- it would get more favorable treatment or wouldn't be
24 looked at as suspiciously.

25 THE COURT: I think it is relevant.

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1 Anything else?

2 MR. ROOS: Then the other one is line 39. The
3 defendant says, who is building it? And this is a reference to
4 the wall. 40, the defendant says or Kolfage says, we are. And
5 line 41 the defendant says, that's gay. And then line 42
6 Kolfage says, who else. And Tim Shea says, what's the name of
7 the construction company that's building the wall.

8 They object to the line "that's gay," and our position
9 is he is responding to Kolfage's statement in a negative way.
10 Like, that's a dumb idea.

11 So, I mean, obviously I think we all wish there was a
12 different wording that was used. But you can't like divorce
13 the context here which is he is responding to the suggestion
14 that they are going to say they are building the wall.

15 THE COURT: You are saying that "that's gay" means?

16 MR. ROOS: That's dumb.

17 THE COURT: That's silly?

18 MR. ROOS: Silly, yeah.

19 MS. CAPPELLINO: I mean it clearly is an off color
20 remark. I don't really understand the context one way or
21 another. I do believe it is irrelevant and it would be
22 prejudicial to Mr. Shea. I don't believe he meant any harm. I
23 don't believe this is a --

24 THE COURT: They're discussing whether the plan would
25 be seen as legitimate. Do you agree with that?

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1 MS. CAPPELLINO: Your Honor, it is my understanding
2 they are talking about who could be sent down to do the actual
3 construction, and the conversation begins on the premise that
4 whoever goes down and deals with the people along the border,
5 whoever they are buying property from etc., etc., they need to
6 be trustworthy. I know the government's interpretation is that
7 we're creating a shell and we want it to look legitimate.
8 That's not our reading of it.

9 THE COURT: Where is it you're beginning?

10 MR. MERINGOLO: The whole thing is about construction.

11 MS. CAPPELLINO: From line one onward.

12 THE COURT: Let me just read it through.

13 (Counsel conferring)

14 THE COURT: I want to understand this. Starting on
15 line one, Mr. Shea is saying to negotiate these land deals, we
16 need a Spanish speaking negotiator. Brian, and I have one.

17 So, these land deals are deals with individuals who
18 would be property owners?

19 MR. ROOS: That's my interpretation.

20 THE COURT: So, is it your impression these property
21 owners are not English speakers?

22 MR. MERINGOLO: Some of them aren't.

23 THE COURT: Some of them are not English speakers. So
24 whether they're Hispanic or not certainly seems relevant.

25 MR. MERINGOLO: That is relevant, yes.

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1 THE COURT: So what is not relevant in your opinion?

2 MR. MERINGOLO: The reference to "it's gay." That
3 Mr. Kolfage said.

4 THE COURT: So, I understand the prosecution to be
5 saying that that remark is a disparagement of what was said or
6 proposed by the speaker, and I think it's relevant. So, I'm
7 going to permit it to go in.

8 MR. ROOS: Thank you, your Honor. There is some other
9 lines, 12 through 19, which I don't think we particularly care
10 about so we'll work out a redaction with the defense counsel on
11 those.

12 (Counsel conferring)

13 MS. MOE: Your Honor, there was one other issue that
14 we wanted to raise before the jury comes back. Which is that
15 during the presentation of evidence this morning, we heard
16 defense counsel speaking rather loudly at counsel table and in
17 a way that I think is audible to us and I think also to the
18 jury, making comments about the government's case. Sort of
19 underscoring some themes from the defense opening.

20 I just wanted to make a record, I've let Mr. Meringolo
21 know, I want to make sure that won't happen going forward, that
22 there will be comments during the presentation of our evidence
23 that the jury can hear.

24 Whether it is an accident or not, I don't mean to cast
25 aspersions. I want to make sure going forward there aren't

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1 comments at counsel table the jury can hear.

2 MR. MERINGOLO: We would like to know what witness
3 this was and when.

4 MS. MOE: Yes, your Honor. By way of example, during
5 the direct examination of Ms. Deperi, I heard a comment "This
6 is also scripted." Which is of course a comment that was also
7 in opening. And also a comment during the presentation of some
8 of the chat messages "This is also misleading."

9 It is just comments at defense counsel table that are
10 being overheard. Again, I don't mean to cast aspersions in any
11 way. I want to make sure going forward that the jury can't
12 hear what the attorneys are talking about at counsel table. So
13 I flag that for defense counsel and just hope going forward
14 that's not an issue.

15 MR. MERINGOLO: First, that didn't happen at all.
16 Number one. Number two, she's doing direct examination from
17 here. Angelica is over here, Tim is over here, and I'm over
18 here. And I was writing notes to Angelica to try to help her.
19 She doesn't need any help. And I was just writing notes and
20 tell her about the notes. I did not one note -- they are all
21 in the garbage -- not one note I said was misleading.

22 You know, she may have heard this. That's fine. What
23 they want to hear. But, when you are -- let's just call a
24 spade a spade, Judge. When you are doing direct examination,
25 you are listening to the answer. I'm 10 feet away. It just

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1 didn't happen. And I understand the game. I've been around a
2 long time. I understand the game. I'm an emotional
3 ballplayer, but I didn't say that.

4 THE COURT: All right. So, everyone will be careful
5 not to make comments that are audible to the jury. Very well.
6 Let's have the jurors come in.

7 MS. CAPPELLINO: Can I bother with you one more issue.
8 I was on the ground floor, I entered the elevator, a juror, I
9 believe Juror 3 entered, so I immediately exited. There was no
10 communication but I wanted to put on the record.

11 THE COURT: Okay. Please have the jurors come in.

12 I wanted to observe that, apparently, one or more
13 jurors observed to one of my law clerks they would like me to
14 remove my mask when I'm talking.

15 MR. ROOS: Okay.

16 (Jury present)

17 THE COURT: Do the parties agree that all jurors are
18 present and properly seated?

19 MR. ROOS: Yes, your Honor.

20 MS. CAPPELLINO: Yes.

21 THE COURT: Let's bring the witness back, please. And
22 we'll continue with the direct examination of Mr. Hunziker.

23 MR. ROOS: Your Honor, I think there may be an A/V
24 system issue.

25 THE COURT: Oh.

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Hunziker - Direct

1 MR. ROOS: Looks like they're already -- looks like
2 the experts here are already at work on it. So hopefully it
3 will be resolved shortly.

4 THE COURT: We'll just wait a moment.

5 Members of the jury, I didn't bring you in right at
6 2:02 because there were some questions of law that I needed to
7 discuss with the attorneys. Sometimes this comes up. Issues
8 come up during the trial. I'm very aware, I'm thinking about
9 you all the time, I know you are waiting, and I want you to
10 know your time is important to me. And I would not just have
11 you wait for something trivial.

12 Mr. Hunziker, remember that you are still under oath.

13 THE WITNESS: Yes, ma'am.

14 MR. ROOS: Your Honor, it looks like the computer
15 system is working again so if I may proceed.

16 THE COURT: You may.

17 MR. ROOS: Thank you, your Honor. Can we look at
18 Government Exhibit 904 again.

19 BY MR. ROOS:

20 Q. This is the chart we were looking at earlier with some of
21 the texts and e-mails, and I think we made it up to January 11,
22 2019. That's line 59.

23 Do you remember that, Special Agent Hunziker?

24 A. I do.

25 Q. That's the one about in which Bannon responds to Badolato

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Hunziker - Direct

1 COAR can pay him. Do you see that?

2 A. I do.

3 Q. Let's do the next message and why don't you sort of read
4 that off the chart for us.

5 A. On January 11, 2019, at 3:47 p.m. Andy Badolato texts
6 several people or I should say e-mailed several people. "I
7 personally will not take a penny of compensation from these
8 donations except to the extent of reimbursement of expenses
9 incurred in furtherance of this mission. Is a material item I
10 also feel this should be incorporated in the press release also
11 in the quotes by Brian."

12 Q. So, I think to understand that why don't we put up
13 Government Exhibit 103. So the exhibit from which it came.
14 Can I ask you to start by just reading the subject line.

15 A. Sure. "Final GoFundMe page update for approval ASAP."

16 Q. What's the date?

17 A. January 11, 2019.

18 Q. There is a lot of people on this. Can you read who it is
19 from and who it is, to the extent you recognize any names on
20 the cc line.

21 A. From Andy Badolato. It is to Rich Kaye, Dustin Stockton,
22 Brian Kolfage, Steve Bannon, and on the cc line there is a
23 couple other people, including Dan Fleurette.

24 Q. Okay. And sorry. Did you say who it is from?

25 A. Yes. Andy, yes.

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Hunziker - Direct

1 Q. All right. Why don't you read the e-mail here and this is
2 in -- can we zoom out for a second. This is, do you see below
3 this is like a statement to be posted on the GoFundMe page. Do
4 you see that?

5 A. Yes.

6 Q. So, just to give everyone the context. So let's look at
7 the top, and can you read the full e-mail here and I'll ask you
8 some questions about it after.

9 A. "Please find below the final GoFundMe page update as
10 approved by GoFundMe to date with exception to the highlighted
11 in yellow portion that states," and the highlighted portion is
12 "I personally will not take a penny of compensation from these
13 donations except to the extent of the reimbursement of expenses
14 incurred in the furtherance of this mission." End of
15 highlight. "This is being submitted to GoFundMe since it is a
16 material item I also feel this should be incorporated in the
17 press release also in quotes by Brian."

18 Q. So just to make sure we are understanding this thing.
19 First of all, it says the highlighted in yellow portion. There
20 is no yellow on this. Is that the gray part?

21 A. Yes.

22 Q. This was printed out in gray or something?

23 A. Yes.

24 Q. And so, can you just -- there is not a lot of punctuation
25 on here. Maybe you can explain how you read this.

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Hunziker - Direct

1 MR. MERINGOLO: Objection, Judge.

2 THE COURT: Sustained.

3 Q. All right. Let me ask the question a different way.

4 It says please find below the final GoFundMe page
5 update as approved by GoFundMe to date with exception to the
6 highlighted portion. I'll stop there.

7 So is the part that I directed you first, is that the
8 final GoFundMe page update?

9 A. I think that's Andy writing to the group of people about
10 the GoFundMe update.

11 MR. MERINGOLO: Objection to thinking.

12 THE COURT: Sustained. He cannot interpret what the
13 sender was thinking.

14 MR. ROOS: Okay.

15 Q. The part after where it says "I personally will not take a
16 penny of compensation." What does the e-mail say about that
17 statement in the next sentence?

18 A. "This is being submitted to GoFundMe since it is a material
19 item I also feel this should be incorporated in press release
20 also in quotes by Brian."

21 Q. Have you reviewed screenshots of the GoFundMe page?

22 A. Yes.

23 Q. Have you reviewed screenshots of the GoFundMe page that
24 postdate this e-mail?

25 A. Yes.

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Hunziker - Direct

1 Q. Is the language that is in highlight here, have you
2 reviewed screenshots in which that language appears?

3 A. Yes.

4 Q. Let's look at government, let's go back to Government
5 Exhibit 904.

6 A. Okay.

7 Q. And line 61 which is the next line. And that's that?

8 A. That's a GoFundMe page. "100 percent of the funds raised
9 on GoFundMe will be used in the execution of our mission and
10 purpose. I will personally not take a penny of compensation
11 from these donations."

12 Q. Now, directing your attention to line 62. And what's the
13 date? There is a little bit of a time bump here. What's the
14 date on this one?

15 A. February 4, 2019, 9:01 a.m.

16 Q. It is a few weeks after this, right?

17 A. Yes.

18 Q. Can you read the message?

19 A. From Tim Shea to Brian Kolfage and Amanda Shea. "Hey for
20 the Build the Wall store do we want this statement at the top."
21 And then there is a screenshot of the website. And in red with
22 white font it says "all proceeds go directly to building the
23 wall."

24 Q. Let's bring up source material which is Government Exhibit
25 23. And starting at the top, who are the participants on this

M5o3she3

Hunziker - Direct

1 text message exchange?

2 A. Brian Kolfage, Tim Shea, and Amanda Shea.

3 Q. Then let's look at the texts. What's the first text
4 message?

5 A. That's on February 1st, 2019. What's the story with
6 pay/backpay on We Build the Wall for Amanda.

7 Q. Can you read the next message?

8 A. That's the one I just read from the summary chart. "Hey,
9 for the Build the Wall store do we want this statement at the
10 top?" Then it also includes that screenshot.

11 Q. All right. Then can we zoom out. And look at the next
12 message. The next few messages. Can you read through them.

13 A. Sure.

14 Brian Kolfage replies: I'll ask. I think since it
15 can't be proven it's okay.

16 Q. What's that a reference to?

17 MR. MERINGOLO: Objection.

18 MR. ROOS: Not asking what he thinks. It is literally
19 since, we can crop it so we can see the other thing.

20 THE COURT: Are you asking what he's replying to?

21 MR. ROOS: I am asking what the response is to. Where
22 it says "I'll ask. I think since it can't be proven it's
23 okay." I think it was just because it was the message above it
24 wasn't captured. So maybe I can reask it.

25 THE COURT: Go ahead.

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Hunziker - Direct

1 MR. ROOS: Okay.

2 Q. So, line three Brian Kolfage says in the second sentence,
3 "I think since it can't be proven it's okay."

4 And the prior message, what does the prior message
5 say?

6 A. Tim Shea's asking if they want to include the line "all
7 proceeds go directly to building the wall included on the We
8 Build the Wall store."

9 Q. Let's look at line four.

10 A. Tim Shea responds "K."

11 Q. Then what he does he write?

12 A. Tim Shea also writes "I don't want to go to jail."

13 Q. How does Brian respond?

14 A. "All proceeds are licensing do."

15 Q. How does Amanda Shea respond?

16 A. "LOL... jail."

17 Q. How does Tim Shea respond?

18 A. "Don't bend over for the soap."

19 Q. Are there any more messages on this chain? Let's zoom out.

20 A. No, I believe that's the only page.

21 Q. Okay. So then let's go back to the summary chart. And
22 line 63, did we just read that?

23 A. Yes.

24 Q. How about line 64 and 65, did we just read those too?

25 A. We did, yes.

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Hunziker - Direct

1 Q. So most of the messages that were on Exhibit 23 are also on
2 the summary chart here?

3 A. Yes.

4 Q. The jury can look at either?

5 A. Yeah, they can.

6 Q. Line 66. Can you read that?

7 A. Brian Kolfage texts Andy Badolato. "My 100K hasn't gone
8 through yet." It is an e-mail.

9 Q. Why don't we bring up that e-mail. Can we see Government
10 Exhibit 112. And just start at the top. Who is the e-mail
11 from and to and what's the subject line?

12 A. From Brian Kolfage to Andy Badolato. And the subject line
13 is "pay."

14 Q. And then what, without reading all of it, is listed up to
15 the point of Brian Kolfage, so everything above it?

16 A. There are several individuals with a dollar amount and then
17 also a mailing address.

18 Q. Then to the part where Brian Kolfage is, can we zoom in on
19 that paragraph that has name Brian Kolfage and also. Just like
20 that. Will you read that.

21 A. "Brian Kolfage, 18,200 biz expenses on personal card.
22 Facebook ad snafu dollar sign plus Dustin and Jen lodging for
23 one month. Also my 100K hasn't gone through yet. We had issue
24 with check was supposed to ACH now."

25 Q. We can zoom out and take that exhibit down. And let's do

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Hunziker - Direct

1 the summary chart again. 904. Which line did we just read?

2 A. 66.

3 Q. So let's look at 67 then.

4 A. On February 13, 2019 Tim Shea writes to Brian Kolfage and
5 Amanda Shea, "Hey, are you wanting Amanda/me to sign the
6 consulting agreement? It doesn't apply."

7 Q. Let's go to the source document so Government Exhibit 25.
8 And can you tell us who the participants are on this text
9 message exchange?

10 A. Sure. On the top you can see the box participants and it
11 lists Brian Kolfage, Tim Shea, Amanda Shea.

12 Q. Can you read us through the chat.

13 A. Sure. 9:37 p.m. on February 13 Tim writes, "Hey, are you
14 wanting Amanda/me to sign the consulting agreement." Tim Shea
15 then writes "it doesn't apply." Brian Kolfage replies "Yup,
16 everyone needs to sign. It applies to pay. The regular pay."

17 Q. I want to ask you about that last statement. In your
18 review of materials, specifically bank records, did you see any
19 regular monthly payments going to Amanda Shea?

20 A. Yes.

21 Q. What amount were they in?

22 A. They started off between five and \$6,000 and at a later
23 time looked like they jumped to 10 grand a month.

24 Q. Roughly the same as that e-mail we looked at where she was
25 listed out?

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1 A. Yes.

2 Q. In your review of the bank records, did you see other
3 payments to Tim Shea besides those monthly payments to Amanda
4 Shea?

5 A. Yes. Just other payments.

6 Q. So we'll come back to that. Let's go back to the summary
7 chart. And there are two more messages here at the bottom.
8 Why don't you read the first one.

9 A. On February 19, Brian Kolfage texts Andy Badolato, "We need
10 to figure out my pay. We started everyone at December 20th
11 mine was 100K upfront then 20 a month. How's it work for me"
12 and Andy Badolato replies "yes."

13 Q. If we bring up Exhibit 26. Are these the same exact
14 messages that were on the chart?

15 A. Same messages and the same participants.

16 Q. So we can take this down. We went through all those
17 messages on the exhibit.

18 And now I want to circle back to something that we
19 read on January 17, there was -- maybe we'll bring up 904
20 again. On January 17, there's this GoFundMe post and have you
21 seen this type of statement, "100 percent of the funds I won't
22 take a penny" in other places in the materials you read?

23 A. Yes.

24 Q. Where?

25 A. I saw them in transcripts of audio interviews or video

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1 interviews. I saw them on Brian Kolfage's Twitter account. I
2 saw them on We Build the Wall Facebook page. I also saw in
3 what looked like some sort of mass e-mailing or reply all from
4 Brian Kolfage.

5 MR. ROOS: Ms. Drescher, can we please take a look at
6 Government Exhibit 905.

7 Q. Special Agent Hunziker, what's this?

8 A. These are statements that occurred at the end of December
9 and into January 2019 from the GoFundMe page, from video
10 interviews with Brian Kolfage, from Brian Kolfage's Twitter
11 account, from the We Build the Wall Facebook account.

12 Q. Does this chart reflect the entirety of the statements or
13 just an excerpt?

14 A. These are just excerpts.

15 Q. If the jury wanted to examine the entirety of the
16 statement, is that possible?

17 A. Yes. Again, all on the way on the right that GX,
18 Government Exhibit has the supporting documentation and the
19 jury could go there and review the entire document or audio or
20 Twitter.

21 Q. So you just described for us the last, the furthest right
22 column and what that means. Can you just briefly for the jury,
23 what do the other columns, dates, statement, and location a
24 reference to?

25 A. So on the left there is date. In this chart it is in

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1 chronological order. The next one is a statement which is just
2 what was on that source document. The location is the type of
3 information, so if it was Twitter or Facebook. And that last
4 column is where you could find the support for that excerpt.

5 Q. I think you testified earlier that January 11 was when this
6 sort of new announcement happened. Is that right?

7 A. Yes.

8 Q. So, this is you said also this is a chart for the month of
9 January. Roughly, how many statements are on this chart?

10 A. A little over two dozen.

11 Q. So for this one, I'm not going to go through all these
12 statements. I just want to ask you about a few of them. So
13 let me first can we zoom in on the third line. January 11.

14 Is this the same statement as was on the other chart?

15 A. Yes.

16 Q. So it's from the GoFundMe page?

17 A. Yes.

18 MR. ROOS: Why don't we put that up Government 306,
19 please. And can we go to I think it is page four.

20 Let's go back to the chart, please, Ms. Drescher,
21 Government Exhibit 905.

22 Q. So we looked at the first few entries are all from a
23 GoFundMe page. The fourth entry, why don't you read that for
24 us?

25 A. This is a video interview with Mike Cernovich on YouTube

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1 and GoFundMe. And this is Brian Kolfage speaking. "This whole
2 project, I won't take a penny from these donations, not a
3 penny. I won't get paid from this corporation. Nothing. I
4 can't touch that money. It's not for me. We have bylaws set
5 up. If I did anything wrong with that money, I would be booted
6 out of the corporation. Just like that, I would be voted out.
7 In our bylaws it is specifically spelled out. I will not take
8 a penny for anything. Every dollar of that GoFundMe will
9 100 percent only go to the construction of the border wall."

10 Q. You said this is from a video interview?

11 A. Yes.

12 MR. ROOS: And so, why don't we first show the witness
13 only Government Exhibit 402A-T, Government Exhibit 402B-T and
14 Government Exhibit 402C-T.

15 Q. Special Agent Hunziker, are these transcripts of the video
16 interview portions which are 402, specifically 402 subparts A,
17 B and C?

18 A. Yes.

19 Q. They accurately reflect to the best of your review?

20 A. Yes.

21 MR. ROOS: The government offers 402A-T, 402B-T and
22 402C-T.

23 MR. MERINGOLO: No objection.

24 THE COURT: They are admitted.

25 (Government's Exhibit 402A-T, 402B-T, 402C-T received

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1 in evidence)

2 MR. ROOS: Let's start by playing 402A, and have the
3 transcript next to it, Ms. Drescher.

4 THE COURT: When you use the word transcript, what do
5 you mean, counsel?

6 MR. ROOS: It is the written text of the portion of
7 the interview that's about to play. Thank you, your Honor, for
8 the clarification.

9 (Video playing)

10 MR. ROOS: Can we look at 402B and the accompanying
11 transcript or written text.

12 (Video playing)

13 MR. ROOS: Can we do the last one, 402C and the
14 transcript.

15 (Video playing)

16 Q. If we go back to Government Exhibit 905. So we've looked
17 at the first four entries. Let's look at the fifth one
18 January 12, 2019. And what does this one say?

19 A. This is from Brian Kolfage's Twitter account. "Big
20 salaries? It states in our bylaws I take zero dollars. No
21 salary, no compensation."

22 Q. What source or location did that come from?

23 A. Again it's from Brian Kolfage's Twitter account. And it
24 can be located in Government Exhibit 951A-1.

25 MR. ROOS: Ms. Drescher, can we put that up for the

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1 jury so they can see it.

2 Q. This is the tweet that's quoted in the chart?

3 A. Yes.

4 Q. Can we look at the chart again. 905. And let's look at
5 the next one. And what does that one say?

6 A. "Brian has stated he takes zero dollar salary, zero
7 compensation, and it's in the bylaws." This is from the We
8 Fund the Wall Facebook. That can be located at 953.

9 Q. May we please put that one up so everyone can see the
10 source document.

11 This is the Facebook record from which it came?

12 A. Yes.

13 Q. All right. And let's go back to 905. Can we go to the
14 second page. So I'm skipping over some of these, but, sort of
15 what generally are all the statements about?

16 A. Like the ones we were just discussing regarding
17 compensation.

18 Q. Okay. So let's look, there is a message from January 16,
19 2019. And what's this one?

20 A. It is an e-mail, in all caps it says from Brian Kolfage to
21 Timothy Shea. "I will not take a penny in salary or
22 compensation for my work."

23 Q. Have you seen this language in other materials you've
24 looked at?

25 A. Yes.

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Hunziker - Direct

1 Q. Let's look at the actual e-mail. So Government Exhibit
2 107. What's, well, first of all, where is the line that you
3 just read from?

4 A. It's second from the bottom in all caps.

5 Q. What's this e-mail about?

6 A. It is about raising money for the GoFundMe page for
7 building the wall.

8 Q. And the subject line has this thing where it says we are
9 building a wall four exclamation points and re travel expenses.

10 What does that mean, or what is your understanding of
11 what that means?

12 MR. MERINGOLO: Objection.

13 THE COURT: Sustained.

14 Q. Okay. Have you seen other e-mails that appear like this?

15 A. Yes.

16 Q. What's that a reference to?

17 A. Again, raising money for the wall.

18 Q. Let's go back to the chart. And can we look at -- there is
19 a video on January 17. Can you read that?

20 A. "100 percent of your money goes towards the wall. It is
21 not going to line someone's pocket. I'm taking zero dollars of
22 a salary. No compensation. It is going towards the wall."

23 Q. And that comes from a video?

24 A. Comes from a video on the GoFundMe page and a video of
25 Brian Kolfage.

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Hunziker - Direct

1 Q. Have you reviewed a transcript of the video?

2 A. Yes.

3 MR. ROOS: Can we show the witness Government Exhibit
4 405-T.

5 Q. Special Agent Hunziker, does the transcript fairly and
6 accurately reflect the statements, the words that play in the
7 video?

8 A. Yes.

9 Q. That's a part of that is what's quoted on the chart; is
10 that right?

11 A. Yes, on the summary chart, yes.

12 MR. ROOS: Can we play the video with the transcript
13 next to it. I'm sorry. We offer Government Exhibit 405-T.

14 MR. MERINGOLO: No objection.

15 THE COURT: Admitted.

16 MR. ROOS: Thank you, your Honor.

17 (Government's Exhibit 405-T received in evidence)

18 MR. ROOS: Ms. Drescher, can we display this next to
19 the video.

20 (Video playing)

21 Q. Can we please go back to Government Exhibit 905. And
22 Special Agent Hunziker, just one more off this chart. Let's go
23 to the final page. And do you see the first line for
24 January 22?

25 A. Yes.

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Hunziker - Direct

1 Q. Can you read it?

2 A. "I will not take a penny in salary or compensation for my
3 work."

4 Q. What does that come from?

5 A. An e-mail from Brian Kolfage to Timothy Shea.

6 Q. Let's look at the exhibit. Government Exhibit 110. What's
7 this?

8 A. This is the e-mail that I just read from, the supporting
9 documentation.

10 MR. ROOS: And Ms. Drescher, can you highlight the
11 line that the special agent read.

12 Q. Who is, by the way, who is the e-mail from and to?

13 A. It's from Brian Kolfage to TimShea.realestate@gmail.com.

14 Q. Thank you. We can take this down and we can take down the
15 chart of all the statements also.

16 I want to go back to one of the source documents, the
17 last one we looked at, the last chart was Government Exhibit
18 26. Can we put that back up again.

19 So, Brian Kolfage texts Andy Badolato, "We need to
20 figure out my pay. We started everyone at December 20th. Mine
21 was 100K up front and then 20 a month. How's it work for me."

22 Do you see that?

23 A. I do.

24 Q. That's February 19. Do you see that?

25 A. Yes.

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Hunziker - Direct

1 Q. In the course of your review of bank records, have you seen
2 evidence that Kolfage was paid 100K and then 20K a month from
3 We Build the Wall?

4 A. Yes.

5 Q. In what form was he paid that money?

6 A. It was sent from We Build the Wall through an intermediary
7 to finally to Brian Kolfage.

8 MR. MERINGOLO: Objection.

9 MR. ROOS: What's the objection?

10 THE COURT: Do you want to approach on that?

11 MR. MERINGOLO: I don't think he should be allowed to
12 opine on an intermediary.

13 THE COURT: So then let's come forward.

14 (Continued on next page)

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Hunziker - Direct

1 (At the sidebar)

2 THE COURT: So, the witness is saying that the money
3 went from We Build the Wall to someplace, which he's calling
4 intermediary. Why can't he just say what that place is?

5 MR. ROOS: I didn't know he was going to say
6 intermediary. I was going to ask him what he meant and then I
7 was going to show him a chart.

8 MR. MERINGOLO: Okay.

9 THE COURT: Okay.

10 (Continued on next page)

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Hunziker - Direct

1 (In open court)

2 THE COURT: Overruled.

3 BY MR. ROOS:

4 Q. Special Agent Hunziker, you used, in describing how the
5 money went from We Build the Wall to Brian Kolfage, you said it
6 went through an intermediary. What did you mean by
7 intermediary?

8 A. There was another entity or individual involved in the
9 transaction. So it didn't go directly from the We Build the
10 Wall bank accounts to Brian Kolfage. It went to another entity
11 or person's bank account and then on to Brian Kolfage.

12 Q. Have you worked on an analysis tracing that out?

13 A. I reviewed the analysis, yes.

14 Q. Do some of those payments involve Timothy Shea?

15 A. Yes.

16 Q. Why don't we look at Government Exhibit 902. Special Agent
17 Hunziker, can you explain for the jury what 902 shows.

18 A. Transfers to Brian Kolfage.

19 Q. And what period does this document cover?

20 A. Almost all of 2019.

21 Q. Before we get talk about what any of these transactions
22 are, I just want to talk about what all the arrows and the
23 boxes mean.

24 So, can you describe for the jury how we're supposed
25 to read this thing.

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Hunziker - Direct

1 A. Sure. You start on the left with We Build the Wall. And
2 then you follow the arrows to the right, you'll see another
3 box, and then you continue following those arrows all the way
4 on the right on the end there, and you can see additional boxes
5 and usually the name Brian Kolfage or Freedom Daily.

6 Q. And then on this page it says in big blue numbers 1, 2, 3.

7 MR. ROOS: Ms. Drescher, this is a multipage document.
8 Can we flip through the next two pages.

9 Q. 4, 5, 6, 7, 8, 9, 10, 11, 12.

10 So what do the numbers 1 through 12 reference to?

11 A. These are just the number of the transactions. So there
12 were 12 transactions total. And the numbers on the left just
13 indicate which number we're referencing to.

14 Q. 12 transactions paying Brian Kolfage?

15 A. Yes.

16 Q. There were many more than that number of transactions in
17 the bank records you looked at, I take it?

18 A. Many more.

19 Q. So we understand the chart. Why don't we focus in on this
20 first transaction here. The one that's numbered number one.
21 And why don't we start, why don't you walk us through what
22 we're looking at here.

23 A. Okay. So on the left, they all start with We Build the
24 Wall. And then you can see the arrow going to Citizens of the
25 American Republic. That's a Steve Bannon company. On the top

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Hunziker - Direct

1 of the line you can see the date February 4, 2019, and below
2 that you can see the dollar amount of that transaction, in this
3 case \$250,000. Below the entity you can see that the beginning
4 balance for Citizens of the American Republic on that morning
5 was \$93,557. That's before the wire came in. And then on
6 February 11, 2019, \$100,000 was sent to Brian Kolfage's
7 personal PenFed account ending in 9026. And then on
8 February 19, 2019, \$238,370 was sent to Stephen Bannon's AmEx
9 card.

10 Q. So I want to break this down a little bit more. So, the
11 first box is a bank account. Is that right? On the left. I'm
12 sorry.

13 The first box on the left that says We Build the Wall?
14 A. Yes. This represents the Capital One account for We Build
15 the Wall, and you can see the account number or the last four
16 digits of it.

17 Q. And what does signers mean?

18 A. Those are the people who are able to make transactions on
19 that bank account. So in this case, Brian Kolfage and Maureen
20 Otis are the signers.

21 Q. So how are you able to figure out who the signers were on
22 an account?

23 A. I was able to review opening documents from the bank
24 account. And part of that is a signer page.

25 Q. And then from the first bank account was the blue arrow and

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Hunziker - Direct

1 it is sort of the pointing in the direction of the yellow box.

2 So is there any significance to the direction of the arrow?

3 A. Yes, that's the direction of the flow of money.

4 Q. What does the blue arrow signify?

5 A. The blue arrow signifies that the money is coming from the
6 We Build the Wall account at Capital One and going into the
7 City National bank account in the entity's name Citizens of the
8 American Republic. The signers on that account are Stephen
9 Bannon and Grace Chong.

10 Q. And the information above and below the arrow. What does
11 that mean?

12 A. The date and dollar amount.

13 Q. And does the date refer to the date of the, let's say, I
14 think you said this one was a wire transfer, right?

15 A. Yes.

16 Q. If there are checks, does the date refer to the date that's
17 on the check or the date it was deposited?

18 A. In some of them, both are captured. So you will see the
19 date of the check, but a lot of times it is the date that the
20 check was actually deposited as opposed to mailed or signed by
21 whoever was sending the check.

22 Q. Got it. All right. So then the middle yellow box, that's
23 another bank account I think you just said; is that right?

24 A. Yes.

25 Q. And then we have more arrows, so, what do those mean?

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Hunziker - Direct

1 A. It means that money is flowing from that Citizens of the
2 American Republic account into, in this case, Brian Kolfage's
3 PenFed account, and Steve Bannon's AmEx account.

4 Q. And last two boxes, what are those, what do those signify?

5 A. Those are the bank accounts and the name on the bank
6 account. Or the AmEx card in this situation for Stephen
7 Bannon.

8 Q. So out of this reading it all together, \$100,000 goes to
9 Kolfage; is that right?

10 A. Yes, on February 11.

11 Q. We'll come back. Can we zoom out of this. We'll come back
12 to the other 11 transactions that are listed on here.

13 Let me ask, for some of these transactions, have you
14 worked on timelines?

15 A. Yes.

16 Q. Let's look at, you know what, I forgot to ask you a
17 question. There's little purple numbers here at the bottom.
18 What are those a reference to?

19 A. Those are the government exhibits where these bank accounts
20 can be found. So if the jury wanted to look up some of these
21 transactions, they could refer to these numbers to find the
22 source material.

23 Q. Okay. So I was asking you about whether you made some
24 timelines to go with some of these transactions and I think you
25 said yes, right?

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Hunziker - Direct

1 A. I didn't make the timelines. I reviewed the timelines.

2 Q. Got it. Let's look at an example of one of those and we'll
3 come back to this financial chart.

4 Can we please see the timelines which are Government
5 Exhibit 906.

6 Now, Special Agent Hunziker, is there a timeline for
7 each one of the transactions?

8 A. No.

9 Q. Is this a sampling or how many are we talking about here?

10 A. Less than a dozen, maybe eight.

11 Q. And at the top of this first page here it says timeline of
12 transaction number one. January/February 2019. Do you see
13 that?

14 A. I do.

15 Q. So when it says transaction number one, what's that a
16 reference to?

17 A. That's a reference back to Government Exhibit 902. That
18 flow chart we were just looking at for the transfers to Brian
19 Kolfage.

20 Q. Transaction one was that transaction where the 250 went
21 from We Build the Wall to Steve Bannon's entity and then the
22 other -- the \$100,000 went from Kolfage there. That's what
23 transaction one is, right? That we now have up on the screen.

24 A. Yes, the first of 12.

25 Q. So this is a timeline about that?

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Hunziker - Direct

1 A. Yes.

2 Q. Just to orient ourselves. Why don't we look at the next --
3 we'll stay on this page. Just to orient ourselves, how does a
4 person read this document.

5 A. You read it from left to right. In the middle there you
6 can see the date, it is in chronological order. And if there
7 is multiple boxes on the same date, just read them from the top
8 to the bottom and go on to the next day.

9 Q. And is there any significance to the colors?

10 A. Yes. The colors, the red are the messages, the blue green
11 teal color there is the transaction. And there is also a black
12 box that's just other information.

13 Q. So let's start on this first transaction. And can you just
14 walk us through from left to right the timeline here.

15 A. Sure. On January 18, 2019, Badolato e-mails Bannon that
16 Kolfage will be paid \$100,000 with 20,000 monthly. That's at
17 12:01 p.m. On February 4, We Build the Wall wires \$250,000 to
18 Citizens of the American Republic. The balance on that day was
19 \$93,557 before the wire. On February 5, Kolfage e-mails
20 Badolato, "My 100K hasn't gone through yet. We had issues with
21 check. Was supposed to ACH now." On February 11, Citizens of
22 the American Republic wires \$100,000 to Brian Kolfage. And on
23 February 19, Kolfage texts Badolato "We need to figure out my
24 pay. We started everyone at December 20th, mine was 100K
25 upfront then 20 a month. How's it work for me."

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Hunziker - Direct

1 Q. On this timeline, do you see where it says GX and then a
2 little number at the end of each of these bubbles?

3 A. Yes.

4 Q. What does that refer to?

5 A. Again, that's the source documentation for that message in
6 this case. And if the jury wanted to, they can go and look
7 that up.

8 Q. I think actually we've already looked at a bunch of these
9 on here. Why don't we pull up the middle one GX 112. This is
10 the e-mail that we looked at earlier, right?

11 A. It is, yes.

12 Q. And the part about "my 100K hasn't gone through yet" is at
13 the bottom there, right?

14 A. Yes.

15 Q. So the timeline is taking parts of the various e-mails and
16 text messages and putting them on the timeline; is that right?

17 A. Yes.

18 Q. Let's go back to the timeline then. So on February 4,
19 there is the wire from We Build the Wall to Citizens of
20 American Republic. Then the next day, is that e-mail, then how
21 many days in between that e-mail and when Citizens of American
22 Republic wires \$100,000 to Kolfage?

23 A. Six.

24 Q. Okay. And then there is the last text message, and this is
25 the one that I think we looked at just a few minutes ago,

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Hunziker - Direct

1 right, Government Exhibit 26 where Kolfage is talking about
2 100K a month, 100K upfront and 20K a month?

3 A. Yes.

4 Q. Okay. So, after that message, which is on February 19,
5 2019, were you able to observe whether Kolfage started getting
6 payments of \$20,000 or more a month?

7 A. Yes.

8 Q. Sorry. Yes, you observed it, or you were able to observe
9 something or, yes, he was receiving that?

10 A. Both. I was able -- I was able to trace that money into
11 his account, approximately \$20,000 a month, and then we just
12 discussed this \$100,000 upfront payment.

13 Q. Okay. So let's go back to Government Exhibit 902. And
14 let's look at the second transaction. Can we zoom in on that.

15 Is this organized in the same way as the first
16 transaction?

17 A. It is, yes.

18 Q. That last one was January/February and this one is March,
19 right?

20 A. Yes.

21 Q. Can you explain what we're looking at here?

22 A. Yes. It is very similar to the first transaction we looked
23 at. This is the second one in March. We Build the Wall wires
24 \$100,000 on March 6 to Citizens of the American Republic,
25 that's Steve Bannon's company. The beginning balance on that

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1 day was \$821,789. Then the next day on March 7, 2019, \$20,000
2 is wired or sent to Brian Kolfage's PenFed account. And then
3 on March 11, \$100,000 is sent to Steve Bannon's AmEx account.

4 Q. Okay. And then, let me ask you just in terms of the way
5 this is structured. How does it compare to the first
6 transaction?

7 A. It's very similar. It uses the same intermediary company,
8 Citizens of the American Republic. And the money goes to Brian
9 Kolfage and Steve Bannon.

10 Q. All right. Zoom out of there.

11 MR. ROOS: Can we have a side bar for one second.

12 THE COURT: Yes.

13 (Continued on next page)
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M5o3she3

Hunziker - Direct

1 (At the sidebar)

2 MR. ROOS: Your Honor, I just noticed a few jurors
3 look a little sleepy. I don't know if your Honor ever takes an
4 afternoon break. I know maybe this is the financial stuff of
5 stuff can be dense for some people. I thought maybe the jurors
6 want to stand up and stretch their legs for a second. I'll
7 leave it to you. I just notice somebody in the back, two
8 people in the back seemed to be a little snoozy.

9 THE COURT: Well --

10 MR. ROOS: Maybe it's a reflection on me.

11 THE COURT: You are taking a very granular approach to
12 the presentation of evidence and it is repetitive. I think you
13 have gotten your point across and I think you should consider
14 paring.

15 MR. ROOS: I'll keep it kind of moving. I am not as
16 animated as John here. So keep the jury in the same way.

17 THE COURT: If you want me to give them 10 minutes
18 I'll do that. That's all right. I think they'll appreciate
19 that. But I do want you to pick up the pace.

20 MR. ROOS: Maybe if it is okay with your Honor, give
21 them a very short break, I'll take that time to cut some of my
22 questions or either reading it off the chart or off the exhibit
23 but not both. And we can maybe resume.

24 THE COURT: Okay.

25 (In open court)

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Hunziker - Direct

1 THE COURT: Members of the jury, we're going to take a
2 brief 10-minute break. Remember that you are not allowed to
3 discuss the case amongst yourselves or with anyone else. Don't
4 permit anyone to discuss the case in your presence.

5 (Jury excused)

6 (Recess)

7 (In open court; jury present)

8 THE COURT: The parties agree that all the jurors are
9 present and properly seated?

10 MR. ROOS: Yes, your Honor.

11 THE COURT: Mr. Meringolo?

12 MR. MERINGOLO: Yes, Judge.

13 THE COURT: Please be seated. And you may continue
14 your inquiry.

15 MR. ROOS: Thank you, your Honor.

16 THE COURT: And remember you are still under oath.

17 THE WITNESS: Yes, your Honor.

18 BY MR. ROOS:

19 Q. Can we bring up Government Exhibit 906. Page two. And
20 sorry. That's not right. I'm sorry. Let's go back to 902.
21 And we had just talked about the top two transactions.

22 Let's talk about number three. Can we zoom in on
23 that. Can you walk us through this transaction.

24 A. On March 27, 2019, We Build the Wall sends \$100,000 to
25 Timothy Shea and Amanda Shea's personal U.S. Bank account

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1 number 8292. The opening balance on that day was \$6,290. Then
2 later that day, again on March 27, \$50,000 is sent to Freedom
3 Daily, which is Brian Kolfage and Ashley Kolfage account at
4 Wells Fargo ending in 4584.

5 Q. Let's put up Government Exhibit 901. This says transaction
6 number three at the top. What is this chart?

7 A. This chart has a little bit more detail from the Government
8 Exhibit 902. So it is the same transaction number three. But
9 at the end there you can see the Freedom Daily account, that's
10 where the last one ended and this one then shows that \$50,000
11 on March 29 was sent to Brian Kolfage's personal PenFed account
12 ending in account number 9026.

13 Q. Let me just ask you a question about this chart. So, We
14 Build the Wall sends \$100,000 to Tim and Amanda Shea's bank
15 account. Before that \$100,000 was sent, how much money was in
16 the account?

17 A. \$6,290.

18 Q. Later that day or the same day, there is a payment for
19 \$50,000. Was there enough money in the account to pay Freedom
20 Daily without the wire from We Build the Wall?

21 A. No. They needed the \$100,000 from We Build the Wall to
22 cover that 50.

23 Q. We can take this down.

24 Is there a timeline like the ones we were looking at
25 earlier that also goes along with this transaction?

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Hunziker - Direct

1 A. Yes.

2 Q. Let's put up Government Exhibit 906, page two. And what is
3 this a timeline of generally?

4 A. Transaction number three that we just looked at.

5 Q. Here's what I'd like to do. You see how the first all four
6 messages on the first day are from the same exhibit?

7 A. Yes. 29.

8 Q. Why don't we pull up that exhibit and read them off the
9 exhibit. So let's do Government Exhibit 29. And who are the
10 participants or the people on this text message exchange?

11 A. Brian Kolfage, Andy Badolato, Tim Shea, Amanda Shea, and
12 Dan Fleurette.

13 Q. And let's flip through it. How many pages are we working
14 with here?

15 A. Five.

16 Q. Five pages, okay. So, we're not going to read all this out
17 loud. So everyone can rest easy. I'm going to ask you some
18 numbers, okay.

19 A. Okay.

20 Q. So let's start on the first page. Why don't we look at the
21 first one.

22 What's the date of the first message?

23 A. March 19, 2019.

24 Q. I want you to read for starters the very first message of
25 the chain.

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Hunziker - Direct

1 A. It's from Tim Shea. "To negotiate these land deals we need
2 a Spanish speaking negotiator. Brian and I have one."

3 Q. All right. Then let's go to the second page. And do you
4 see line 23?

5 A. I do.

6 Q. And why don't you read from 23 until 27.

7 A. Brian Kolfage texts on March 19, "The NM people. We got
8 Lochiel locked up." Tim Shea replies, "Maybe we offer
9 security." Brian Kolfage replies, "They don't care. We
10 offered mega money."

11 Q. Then let's look at line 33. Sorry. Line 33 and line 34.

12 A. A text from Brian Kolfage on March 19. "We got AZ people.
13 We are good."

14 Q. So for all of these NM, AZ, are those states?

15 A. I believe so, yes.

16 Q. New Mexico and Arizona?

17 A. Yup.

18 Q. So we are talking about people in various states?

19 A. Yes.

20 Q. And the first message you read, I think you said was about
21 a land deal; is that right?

22 A. Yes.

23 Q. Let's look at now line 35. And can we do line 35 to the
24 end. And can you just read from line 35 down to the bottom of
25 the page?

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1 A. Sure.

2 Tim Shea starts "We need a solid fucking plan,
3 otherwise we go to prison." Brian Kolfage replies "LOL." Tim
4 Shea replies "LOL." Brian Kolfage writes "We have AZ nailed
5 down." Tim Shea replies "Who building it." Brian Kolfage
6 writes "we are." Tim Shea, "That's gay." Brian Kolfage, "Who
7 else." Tim Shea, "What is the name of the construction company
8 that is building the wall?" Brian Kolfage, "We haven't hired."
9 Tim Shea, "blink blink." Brian Kolfage, "LOL. It's already
10 came up".

11 Q. Let's turn the page. And can you start at 48.

12 A. Brian Kolfage writes, "It might be too shady." Tim Shea,
13 "We have to firm this shit up. Also on Pitch Fork." Brian
14 Kolfage writes, "Everyone will want to know. We need to have
15 that be legit. If it came out we hired ourselves it will be
16 bad." Tim Shea replies, "We need to create companies that I
17 hired you. I'm paying you for a service, consulting." Brian
18 Kolfage, "Part of me says do it, but I'm not sure if Steve
19 would let it fly. Pitch Fork is actually legitimate. We had a
20 real purpose and experience." Tim Shea writes, "But the
21 transfer between me and you." Brian Kolfage, "If you own a
22 construction firm and can do it for cheap. LOL. By golly.
23 Fist bump." Tim Shea writes, "Yeah, we need to talk threw
24 this." Brian Kolfage writes, "Too bad you are not disabled and
25 black and a woman. Go to Detroit. Find one." Tim Shea, "If

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1 600K comes in and I transfer for 300K to you." Brian writes
2 back, "Ya that's legit." Tim Shea writes, "We'll have to
3 account for that." Brian Kolfage writes, "Media Vines." Brian
4 writes "K1." Tim Shea replies, "We're creating a family trust
5 that is cloaked." Brian Kolfage, "What's that mean." Tim Shea
6 replies, "It's veiled so no one knows who owns the home or
7 business." Brian Kolfage replies, "I'm going to dump my 300
8 into the market." Tim Shea replies "LOL. On what?" Brian
9 Kolfage FB. Tim Shea "fuck you." Brian Kolfage, "Then I'm
10 going to blow up their share holder meeting. And sue them.
11 Like Nunez just sure Twitter. Sued." Tim Shea writes, "Then
12 FB stock drops?" Brian Kolfage "I'm not." Tim Shea, "Why
13 buy." Brian Kolfage, "I am going to let my buddy handle it
14 all. He manages the Merrill Lynches in Florida."

15 Q. We can stop there. Now, many of these messages appear on
16 the timeline we were just looking at, right?

17 A. Yeah.

18 Q. Let's bring up 906 again. And do you see the four red
19 bubbles here on the left side?

20 A. Yeah. As I mentioned, the red indicates text messages or
21 messaging and to read them from the top to the bottom.

22 Q. Did all four of these come out of that very long text chain
23 that I just read?

24 A. Yes.

25 Q. I want to unpack that a little bit. So, starting on one of

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Hunziker - Direct

1 these March 19 text messages. Do you see the reference where
2 Tim Shea says in the last message about creating a company or
3 family trust that is cloaked or veiled. Do you see that?

4 A. Yes.

5 Q. All right. According to the timeline, what happens on
6 March 26?

7 A. A week later, Ranch Property Marketing and Management LLC
8 created in Wyoming by an incorporation service. Tim Shea is
9 100 percent owner.

10 MR. ROOS: Ms. Drescher, can we please see Government
11 Exhibit 501. The front page there says formation documents.
12 Now can we pull up the stipulation marked S7 which is in
13 evidence. If you zoom in on paragraph one. And just looking
14 at the first sentence.

15 Q. Special Agent Hunziker, where did that exhibit we were
16 looking at, 501, come from?

17 A. It came from a court-authorized search warrant from the
18 residence of Timothy Shea and Amanda Shea located in Castle
19 Rock, Colorado.

20 Q. So let's go back to the material, to that 501 exhibit. And
21 so formation documents, let's look at page four of this
22 document. What state is this incorporation paperwork from?

23 A. The state of Wyoming.

24 Q. What is the name of the company that's being incorporated?

25 A. Ranch Property Marketing and Management LLC.

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Hunziker - Direct

1 Q. This is incorporation paperwork for Wyoming. What state is
2 the mailing address located in?

3 A. Colorado.

4 Q. Do you recognize that Colorado address?

5 A. Yes, that's from the page we just read, the stipulation, it
6 is the residence of Timothy Shea and Amanda Shea.

7 Q. Let's go to page seven of these formation documents. And
8 do you see the date on which this company was created?

9 A. March 26, 2019.

10 Q. How many days after the text messages where he says it's
11 veiled is this?

12 A. One week.

13 Q. Can we look at page eight. Who does it say the owner on
14 page eight is of Ranch Property?

15 A. Timothy Shea, 100 percent owner.

16 Q. For companies incorporated in Wyoming, are you familiar
17 with what kind of information about the ownership the state
18 makes publicly available?

19 A. Yes, Wyoming has very favorable corporate secrecy laws, so
20 they don't make the owner of the company public.

21 MR. MERINGOLO: Objection, Judge.

22 THE COURT: Sustained. He is not testifying as a
23 legal expert.

24 MR. ROOS: I can lay a foundation as a law enforcement
25 witness who previously worked for the IRS, if that's helpful.

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1 THE COURT: Then you should lay the foundation.

2 Q. Special Agent Hunziker, I think you testified earlier that
3 you worked for the IRS; is that right?

4 A. Yes.

5 Q. And as part of the IRS, as your work with the IRS and then
6 your current work as a Special Agent with the U.S. attorney's
7 office, were you involved in any investigations that related to
8 incorporating companies?

9 MR. MERINGOLO: Objection, leading.

10 THE COURT: Overruled. You may answer.

11 A. When at the IRS, there was the Panama Papers leaks and the
12 IRS was involved in that investigation. Through that
13 investigation, it came out that a number of those companies in
14 Panama were incorporated in Wyoming. So, through my
15 involvement in that investigation, I learned that Wyoming had
16 favorable corporate secrecy laws.

17 Q. Let's go back to Government Exhibit 902. Let's go to
18 transaction four. I'm sorry. Actually, my apologies. Let's
19 go back to Government Exhibit 906.

20 This is the timeline we were just looking at and we've
21 been through the first column, and we looked at the
22 incorporation documents. Let's just read through the last
23 column here on this page. Go ahead.

24 A. Sure Kolfage texts Tim Shea. "Send me an invoice for the
25 Facebook pages, Joe and Trump group. 100K invoice to We Build

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Hunziker - Direct

1 the Wall and We Fund the Wall. Three pages for 100. Hold off.
2 Just talked to Andy." Tim Shea replies, "Still no money. I
3 wonder if he did the wire wrong."

4 Then We Build the Wall wires \$100,000 to Tim Shea's
5 bank account. The balance that morning was \$6,290 before the
6 wire came in.

7 Tim Shea texts Kolfage, "I got the wire, sending to
8 you."

9 And Tim Shea bank account wires \$50,000 to Freedom
10 Daily bank account. Kolfage is the signer.

11 Q. Let's go now to Government Exhibit 902 which are the
12 transactions and look at the fourth one. And this is another
13 one of the transactions to Steve Bannon's entity?

14 A. Yes, Citizens of the American Republic.

15 Q. Can you summarize it briefly.

16 A. Sure. On April 12, 2019, \$30,000 is sent from We Build the
17 Wall to Steve Bannon's entity Citizens of the American
18 Republic. Then on April 22, 2019, \$20,000 is sent to Brian
19 Kolfage's personal PenFed account.

20 Q. Okay. Is there a timeline that goes with this?

21 A. Yes.

22 Q. Can we look at Government Exhibit 906, page three. Can you
23 just read us through the timeline.

24 A. On April 11, 2019, Dan Fleurette texts Badolato, "Hey, no
25 dollar sign dollar sign hit. I can't pay Brian." Badolato

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Hunziker - Direct

1 replies, "Will show early first thing a.m."

2 On April 12, We Build the Wall wires that \$30,000 to
3 Citizens of the American Republic. And Badolato texts
4 Fleurette, "Wires sent. Turn Brian today please you got 10K."

5 On April 15, Badolato texts Fleurette, "Brian did not
6 get his wire. Check it ASAP please." Fleurette replies, "Can't
7 talk. I'm on it." Badolato responds, "Tell Brian. It's
8 embarrassing. Thanks."

9 On April 18, Badolato texts Fleurette, "Brian's funds
10 did you speak to him?" Fleurette replies, "Yes. Funds have
11 been released. He should have them today."

12 And then on April 22, Citizens of the American
13 Republic wires \$20,000 to Brian Kolfage's account. Fleurette
14 texts Badolato, "Tracking it through the bank. It was
15 definitely sent."

16 Q. I think Dan Fleurette's name has come up a few times. Based
17 on the materials you reviewed, do you know what, if any,
18 relationship he has with We Build the Wall or Citizens of
19 American Republic?

20 A. He's the treasurer of Citizens of American Republic.

21 Q. And other name on here besides Kolfage is Andy Badolato.
22 Can you remind us who Andy Badolato is?

23 A. Andy Badolato is a business associate of Steve Bannon's.

24 Q. Let's move on from this transaction and go to transaction
25 number five. Who is the intermediary on this transaction?

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Hunziker - Direct

1 A. Ranch Property Marketing and Management. That's that
2 Wyoming LLC we discussed earlier.

3 Q. Can you just describe this transfer for us.

4 A. On April 22, \$50,000 is wired from We Build the Wall to
5 Ranch Property Marketing and Management. The beginning balance
6 for Ranch Property Marketing and Management was 100 bucks that
7 day. On the same day \$25,000 is sent to Freedom Daily which is
8 Brian Kolfage and Ashley Kolfage's account.

9 Q. I think earlier you showed us a more detailed version of
10 one of these charts. Is there a similar, like, version of this
11 chart with a little more detail?

12 A. Yes, it is.

13 Q. Can we see Government Exhibit 901 page two. What does this
14 show?

15 A. So this will show the \$50,000 that was sent to Ranch
16 Property Marketing and Management from We Build the Wall. The
17 wire transfer detail had a memo line that said "per invoice."
18 And then on the memo line that was on the \$25,000 that was sent
19 to Freedom Daily on April 22, it said "social media accounts."
20 We can trace that money further from Freedom Daily, there was
21 \$20,000 that was sent on May 1st to Brian Kolfage's American
22 Express account. Then if you go back to Ranch Property
23 Marketing and Management, on April 29, 2019, \$20,000 is sent
24 from that account to Timothy Shea and Amanda Shea's personal
25 bank account. On May 10, another \$2,000 is sent to that

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Hunziker - Direct

1 personal account.

2 Q. So this \$100 in Ranch Property; is that right?

3 A. On April 22 there was.

4 Q. 50,000 comes in?

5 A. Yes.

6 Q. 25,000 goes to Freedom Daily?

7 A. On the same day.

8 Q. And if you combine those two, 22,000 goes to Tim and Amanda
9 Shea's bank account?

10 A. Yes.

11 Q. You mentioned this memo line. Where does that come from?

12 A. That was the copy of the check.

13 Q. Why don't we look at that check. Can we see Government
14 Exhibit 1900, page number 258633.

15 Which bank account is the check from?

16 A. Ranch Property Marketing and Management. That's the
17 Wyoming company opened by Timothy Shea.

18 Q. Who is it written to?

19 A. Freedom Daily, LLC.

20 Q. The memo line?

21 A. "Social media accounts."

22 Q. That's what you were referencing on the charts?

23 A. The memo line.

24 Q. Is there a timeline that goes along with this transaction
25 sequence?

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1 A. Yes.

2 Q. Can we see Government Exhibit 906, page four. And this is
3 the timeline for that whole transaction; is that right?

4 A. Yes.

5 Q. So this is from April 5 to April 30?

6 A. Yes.

7 Q. Can you read us chronologically through the timeline.

8 A. Sure. Start again on the left, April 5, Kolfage texts Tim
9 Shea and Amanda Shea, "Good job, Tim. I heard your new company
10 found a bunch of land for us smiley face. Ranch Property
11 Management." Amanda Shea laughed at the text and replied, "I
12 was kidding about the raise. I'm 10 times happier with RPMM
13 LOL." On April 16, Tim Shea e-mails Kolfage and Badolato
14 "Wondering if I should add Brian as a member of RPMM. That
15 would cover taxes at the end of the year and his name would be
16 hidden in the company veil in Wyoming." Kolfage responds, "For
17 taxes I contract you got social media and u 1099 me."

18 Q. The text from Kolfage says -- or the e-mail says "For taxes
19 I contract you got social media."

20 What remind us what the memo line on the check said?

21 A. "Social media accounts."

22 Q. Sorry. Continue now with the rest of the timeline.

23 A. April 22, Tim Shea e-mails Badolato wiring instructions for
24 Ranch Property Marketing and Management. Then We Build the
25 Wall wires \$50,000 to Ranch Property Marketing and Management.

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Hunziker - Direct

1 On April 22, same day, \$25,000 from RPMM is deposited into
2 Freedom Daily's bank account with the memo line on the check
3 "social media accounts." Tim Shea texts Kolfage, "Hey, sent
4 you a check today, it will be there on Wednesday, from RPMM.
5 25K." On April 30 Tim Shea texts Kolfage and Amanda Shea,
6 "Brian, have you seen RPMM's website RanchPMM.com." Amanda
7 Sheas replies "It is only a splash page for legitimacy."

8 MR. ROOS: Let's look at the website. Government
9 Exhibit 404. Ms. Drescher, can you slowly scroll through.

10 Q. At the bottom there, Special Agent Hunziker, where does it
11 say it's based?

12 A. In Casper, Wyoming.

13 Q. Can we scroll have up a little bit. What does it say the
14 sort of the words in terms of the service on the website?

15 A. "Professional property solutions."

16 Q. What did Amanda Shea say about this website?

17 A. It was a splash page just for legitimacy purposes.

18 Q. Let's go back to Government Exhibit -- we're done with this
19 timeline of transaction number five. Let's go back to the
20 exhibit that shows all the transactions and look at transaction
21 number six.

22 A. Okay.

23 Q. So the last transaction was for April, this one is in May.
24 Can you walk us through it?

25 A. Sure. It's very similar to the last one. It's We Build

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Hunziker - Direct

1 the Wall sends \$30,000 on May 21, 2019, to RPMM. The beginning
2 balance on that day for that account in Wyoming was May 21 --
3 was \$553. And then on there is a check signed on May 20 and it
4 deposits June 5 into the account of Freedom Daily for \$20,000,
5 and that's Brian Kolfage's and Ashley Kolfage's bank account.

6 Q. Is there a more detailed version of the chart?

7 A. Yes.

8 Q. And let's look at 901 page three. What does this show?

9 A. This shows the transaction we just discussed in a little
10 bit more detail. As you can see in that initial \$30,000
11 transaction there is a memo on the wire detail says "Per
12 invoice consulting and construction expenses." That goes to
13 Ranch Property Marketing and Management. On May 22, \$30,000 is
14 sent to Tim Shea and Amanda Shea's U.S. Bank account. And on
15 that same day, \$20,000 is sent to Ranch Property Marketing and
16 Management account. Then there is a check sent with a memo
17 line "Facebook pages" for \$20,000 to Freedom Daily. That's
18 Brian Kolfage's account. And on May 21, \$6,000 sent to James
19 Benvie.

20 Q. Is there a timeline that goes along with this transaction?

21 A. Yes, there is also a timeline.

22 Q. All right. So let's look at Government Exhibit 906, page
23 five. This is a timeline that goes with this transaction we
24 were just looking at; is that right?

25 A. Yes.

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Hunziker - Direct

1 Q. Can you just read us through the timeline.

2 A. On May 6 Kolfage texts "get me paid." On May 21, Tim Shea
3 texts Badolato wiring instructions for Ranch Property Marketing
4 and Management's bank account. Then We Build the Wall wires
5 that 30,000 to RPMM with the invoice "per invoice," with a memo
6 line "per invoice consulting and construction expenses."
7 Badolato replies to Tim Shea, "Send Benvie 6K and BK 20K" and
8 texts wiring instructions for James Benvie. \$6,000 from Tim
9 Shea's bank account to James Benvie's bank account goes out
10 that day. And Tim Shea texts Kolfage, "Hey I overnighted that
11 thing." On May 28 Tim Shea texts Kolfage, "Hey, what's up? I
12 overnighted that check last week. Did you get it?" Kolfage
13 replies, "Yeah. Need to cash." And then on June 5, that
14 \$20,000 check from RPMM is deposited into Freedom Daily's bank
15 account. The check is dated May 20 and the memo line on the
16 check states "Facebook pages."

17 Q. Let me just ask a followup question. The text on May 21
18 from Badolato to Tim Shea says "Send Benvie 6K and BK 20K."

19 A. Right.

20 Q. Do you see anything in the financial tracing of the
21 transactions that matched up with that?

22 A. Yes, James Benvie received 6K, and Brian Kolfage received
23 20K.

24 Q. Let's go to back to the document that lists all the
25 transactions, Government Exhibit 902. So we're through all of

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Hunziker - Direct

1 these. The first six. Number seven.

2 And whose name is on the middle bank account here that
3 we're looking at on this chart?

4 A. The name is Lewis Moon. The Glenda F. Moon Revocable
5 Trust.

6 Q. From your review of e-mails, do you know of any other
7 person who used the Glenda F. Moon Revocable Trust, other than
8 Glenda Moon?

9 A. Lewis B. Moon.

10 Q. So can you just describe what we see in this transaction?

11 A. On June 28 We Build the Wall sends \$50,000 to the Glenda F.
12 Moon Revocable Trust. The trust had \$1,321 on that morning.
13 On July 8, 2019, \$20,000 is sent to Brian Kolfage's PenFed
14 account.

15 Q. Let's look at the next transaction on this page. What's
16 the middle entity on this transaction?

17 A. This is Ranch Property Marketing and Management. That's
18 the Tim Shea company based in Wyoming.

19 Q. Is there a more detailed version of this chart?

20 A. Yes.

21 Q. Why don't we look at the flow of money on that chart rather
22 than this one. So, we'll go to 901, page four. Thank you.
23 Can you walk us through this transaction.

24 A. On July 3, \$48,762 is sent from We Build the Wall to Ranch
25 Property Marketing and Management. They had an opening account

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1 of \$19 that morning. Then on the same day, \$20,000 is sent to
2 Freedom Daily. That's Brian Kolfage's account. And then on
3 July 8, \$7,780 is sent to Timothy Shea and Amanda Shea's
4 personal U.S. Bank account. On July 10, 2019, \$20,916 is sent
5 to Vision Quest Solutions.

6 (Continued on next page)

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Hunziker - Direct

1 BY MR. ROOS:

2 Q. All right. And is there a timeline that goes with this
3 one?

4 A. Yes, there is.

5 Q. Let's look at Government Exhibit 906, page 7.

6 All right. Can you read us through this and we'll go
7 over a few documents that are referenced.

8 A. Between June 30th and July 2nd, Charlie Ford of Vision
9 Quest Solution emails Tim Shea a bill for \$20,916.22 for work
10 concerning a telethon event. Tim Shea forwards that invoice to
11 Badolato and writes: Let's get this check out right away.

12 Tim Shea forwards the invoice to Kolfage and writes:
13 Here's the invoice for Charlie and his team. That check
14 doesn't go out right away but, rather, the next day an email
15 account for Ranch Property Management LLC emails Badolato an
16 invoice for \$48,762 for Vision Quest Solutions at the June
17 telethon event.

18 Tim Shea texts Badolato wiring instructions and asks:
19 Did you send that wire? We Build the Wall wires \$48,762 to
20 Ranch Property Marketing and Management bank account. And a
21 check from Ranch Property Marketing and Management bank account
22 for \$20,000 to Freedom Daily's bank account.

23 Between July 8th and July 10th, on the bottom you see
24 that Ranch Property Marketing and Management bank account pays
25 that \$20,916 to Vision Quest Solutions. That's the invoice we

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Hunziker - Direct

1 read about earlier on June 30th. And Ranch Property Marketing
2 and Management bank account pays \$7,780 to Tim Shea's bank
3 account.

4 Q. I just want to ask you a few follow-up questions about the
5 invoice here. So let's look at the black box and let's start
6 by looking at the Vision Quest Solutions invoice, so Government
7 Exhibit 116-A. Can we put the email that sends it next to it.

8 So for starters, looking at the invoice, who's the
9 invoice from?

10 A. The invoice is from Charlie Ford of Vision Quest Solutions,
11 and he's sending it to We Build the Wall, Inc.

12 Q. And who's listed as the company rep for We Build the Wall?

13 A. Company rep is Tim Shea and has his email account.

14 Q. How much is the invoice for?

15 A. It's for \$20,916.22.

16 Q. Okay. And then who is the invoice sent to?

17 A. This invoice is then sent -- it's sent to Andy Badolato.

18 Q. Okay. By who?

19 A. By Tim Shea.

20 Q. By the way, I should ask, sort of what generally, based on
21 your reading of the invoice, is the invoice for?

22 A. It looks like security.

23 Q. All right. And so then let's go back to the timeline. So
24 after that invoice is emailed to Andy Badolato by Tim Shea or
25 forwarded, is there another invoice sent to Badolato?

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Hunziker - Direct

1 A. Yes, there's another invoice sent on July 3rd from Ranch
2 Property management LLC, which is Tim Shea's company, for
3 \$48,762 for Vision Quest Solutions.

4 MR. ROOS: And can we put up that invoice, Government
5 Exhibit 118-A.

6 Q. And who is the invoice from and to?

7 A. It's from Ranch Property Marketing and Management LLC, and
8 it's to We Build the Wall. And it's for the items, security
9 services, Vision Quest Solutions. And there's a little bit of
10 detail.

11 Q. Okay. And does it say any other -- does it say the invoice
12 is for anything else besides Vision Quest Solutions?

13 A. No.

14 Q. And what's the amount on this invoice?

15 A. \$48,762.

16 Q. Okay. And can we compare this one to Government Exhibit
17 116-A, the Vision Quest invoice.

18 So how did the two bottom-line figures compare to each
19 other?

20 A. The one from RPMM to We Build the Wall is about two and a
21 half times the cost as the one from Vision Quest to We Build
22 the Wall, Inc.

23 Q. Okay. And let's go back to Government Exhibit 901, page 4.
24 And so then how much does We Build the Wall pay after getting
25 those -- that invoice?

M5OVSHE4

Hunziker - Direct

1 A. They pay the RPMM the full amount of the invoice, \$48,762.

2 Q. And what happened to that \$48,762?

3 A. On July 10th, Vision Quest gets the \$20,916 from that first
4 invoice that we saw.

5 Q. That's the amount that was invoiced for?

6 A. From Charlie Ford, yes.

7 Q. Okay.

8 A. And Brian Kolfage's account gets \$20,000, and Timothy Shea
9 and Amanda Shea's account gets \$7,780.

10 Q. Okay. Let's go back to Government Exhibit 902. We have --
11 we're through numbers one through eight. Let's just take a
12 quick look at number nine. Number nine involves a different
13 middle party, is that right?

14 A. Decisive Fiber Group.

15 Q. Okay. And does the same general type of thing happen with
16 this transaction?

17 A. Yes. We Build the Wall sends money, then they, Decisive
18 Fiber Group, sends \$70,000 to Freedom Daily, Brian Kolfage's
19 account, and \$50,000 to White Knights and Vultures, which is
20 Andy Badolato's account.

21 Q. Okay. And then after transaction number nine, let's go to
22 the next page. There are three more transactions. What's the
23 middle party on these three transactions?

24 A. They are all the same, Ranch Property Marketing and
25 Management, the Tim Shea company.

M5OVSHE4

Hunziker - Direct

1 Q. We're not going to go through these ones in any more
2 detail, but let me just ask you a few general questions.

3 Generally, for each of these, how much money went
4 from -- after money came from We Build the Wall to Ranch
5 Property, how much money went from Ranch Property to Brian
6 Kolfage?

7 A. Between 20 and \$30,000 approximately.

8 Q. And roughly how frequently were these transactions?

9 A. Monthly.

10 Q. I asked you earlier about the amounts of these
11 transactions. I want to draw a big picture for the 12
12 transactions that you've been through now. First, how much
13 money in total went from We Build the Wall to Tim Shea and
14 Ranch Property Marketing Management, approximately?

15 A. Approximately \$400,000.

16 Q. And how much money in total went from Tim Shea and Ranch
17 Property Marketing Management to Kolfage?

18 A. Almost half, 190,000.

19 Q. And after paying Kolfage, how much money approximately went
20 to Tim and Amanda Shea?

21 A. Approximately \$153,000.

22 Q. Okay. So that doesn't quite add up to \$400,000, 190 plus
23 153; it leaves a little short. Where's the difference?

24 A. The difference is there were a couple invoices from Vision
25 Quest Solutions that were paid, as well as the James Benvie

M5OVSHE4

Hunziker - Direct

1 account that we looked at for 6K.

2 Q. Okay. And looking at all 12 of these transactions,
3 including the ones that involve a middle party that's not Tim
4 Shea, how much money was Kolfage paid?

5 A. Approximately 420,000.

6 Q. Okay. And after the first \$100,000 payment on the first
7 page, approximately how much was Kolfage paid per month?

8 A. Approximately 20K.

9 Q. Okay. We've been talking about transactions in 2019. I
10 want to ask you about one last transaction, which is in a
11 different year. Before I ask you about that transaction, I'd
12 like to ask you something about Winning Energy.

13 Are you familiar with Winning Energy?

14 A. I am.

15 Q. Let's look at Government Exhibit 408, which is in evidence.

16 What's this?

17 A. This is a screenshot of Winning Energy's website.

18 Q. Okay. And what is depicted on the left side of the screen?

19 A. Depicting a can, an energy drink.

20 MR. ROOS: Your Honor, may I approach?

21 THE COURT: You may.

22 Q. Special Agent Hunziker, do you recognize that from the
23 picture?

24 A. Yeah. Looks like the same can.

25 MR. ROOS: The government offers -- Sunny, what's the

M5OVSHE4

Hunziker - Direct

1 marking? 361?

2 MR. MERINGOLO: No objection.

3 THE COURT: Admitted.

4 (Government's Exhibit 361 received in evidence)

5 Q. All right. On the right side of the screen, what's the
6 price of these things?

7 A. A 12-pack case is \$36.99 for the sugar-free or the regular.

8 Q. Twelve of those things for \$37?

9 A. Yeah, three bucks a can.

10 Q. And have you seen any records relating to where Winning
11 Energy was registered as a company?

12 A. Yes.

13 MR. ROOS: Can we look at Government Exhibit 142.

14 Q. And where is Winning Energy registered?

15 A. Colorado.

16 Q. And have you analyzed transactions relating to the company
17 Winning Energy?

18 A. Yes.

19 MR. ROOS: Can we please see Government Exhibit 903.

20 Q. What is this? Can you describe it?

21 A. Yes. This is a Winning Energy transfer, a transaction from
22 We Build the Wall to Winning Energy LLC.

23 Q. Okay. We'll come back to this. But is there a timeline
24 associated with this transaction?

25 A. There is, yes.

M5OVSHE4

Hunziker - Direct

1 MR. ROOS: Can we look at Government Exhibit 906, page
2 8.

3 Q. All right. Can you walk us through the transaction -- or
4 the timeline?

5 A. On January 1st, 2020, Tim Shea incorporates Winning Energy
6 LLC. That's the Colorado company and the website we just
7 looked at. On May 12, 2020, Tim Shea texts Brian Kolfage,
8 copying Amanda Shea: I trademarked Winning Energy and started
9 this energy drink. We have everything set up, website, etc.
10 The can is Trump beating the impeachment. Our next can will be
11 Trump crushing COVID. We, of course, want you to be part of
12 it.

13 On June 2nd, 2020, Tim Shea emails Karl Mitchell and
14 Chris Stone at DrinkInk that he wants to order 49,920 cans of
15 the Winning Energy drink at 69 cents per can. Tim Shea emails
16 Amanda Shea \$38,500 and the wiring instructions for Winning
17 Energy LLC.

18 On June 30th, 2020, invoice for the DrinkInk is
19 \$34,444.80 in two payments of \$17,222.40. We Build the Wall
20 wires \$38,500 to Winning Energy LLC. On June 4th there's a
21 promissory note between Winning Energy and We Build the Wall
22 for \$38,500. Winning Energy LLC wires \$17,222 to DrinkWorks
23 LLC. And then the second half of that payment, on June 26,
24 Winning Energy LLC wires \$19,722 to DrinkWorks LLC.

25 Q. Okay. So you mentioned a promissory note, the last red

M5OVSHE4

Hunziker - Direct

1 bubble there.

2 A. Yes.

3 MR. ROOS: Let's first -- which is Government Exhibit
4 148. Let's first put up stipulation S-7. Can we zoom in on
5 paragraph 2.

6 Q. And Special Agent Hunziker, what does the stipulation say
7 that the promissory note came from?

8 A. That they are a document and image from Kolfage's computer
9 during a search warrant.

10 Q. And now let's look at the promissory note.

11 MR. ROOS: Can we see Government Exhibit 148.

12 Q. So let me just first ask, what's a promissory note?

13 A. A promissory note is a loan contract.

14 Q. Okay. And how much is this -- how much is this promissory
15 note for?

16 A. \$38,500.

17 Q. Let's go to the last page. Who's it signed by?

18 A. This one is signed by Timothy Shea or Tim Shea, the
19 president of Winning Energy, LLC. And there's a spot for We
20 Build the Wall, Inc. and Brian Kolfage as the president.

21 Q. All right. Does the promissory note say when repayment of
22 that amount of money is due?

23 A. It does.

24 Q. And what does it say, when is it due?

25 A. It's due August 3rd, 2020, a couple months later after the

M5OVSHE4

Hunziker - Cross

1 June signing.

2 Q. Is there a lender fee associated with this?

3 A. Yes.

4 Q. And what does it say that is?

5 A. The numerical number is \$1,950.

6 Q. All right. From your review of bank records, did you see
7 any bank records indicating that this money was -- the 38,500
8 was repaid to We Build the Wall?

9 A. No.

10 Q. Did you see any records showing that any interest or a
11 lender fee was ever paid to We Build the Wall?

12 A. No.

13 Q. And from your review of the Winning Energy website, did you
14 see anything indicating that Winning Energy was affiliated with
15 We Build the Wall?

16 A. No, I didn't see anything.

17 Q. Take a look at that can. See anything on there suggesting
18 it has anything to do with We Build the Wall?

19 A. No.

20 MR. ROOS: No further questions.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. MERINGOLO:

24 Q. Mr. Hunziker, my name is John Meringolo. I represent
25 Timothy Shea.

M5OVSHE4

Hunziker - Cross

1 A. Good afternoon, sir.

2 Q. Good afternoon.

3 You just talked about a promissory note; correct?

4 A. Yes.

5 Q. What happens when you don't pay a promissory note back?

6 A. The company that's owed the money can pursue some legal
7 action to get repaid.

8 Q. Okay. You're aware of a gentleman by the name of Kris
9 Kobach?

10 A. No.

11 Q. You're not aware that he's the general counsel of We Build
12 the Wall right now?

13 A. No.

14 Q. Are you aware that the government seized money from We
15 Build the Wall?

16 A. No.

17 Q. So if you take a loan, you either pay it back or you don't
18 pay it back; you could have a civil lawsuit, correct?

19 A. Yes.

20 Q. Now, you went through a lot of testimony for a few hours;
21 correct?

22 A. Yes.

23 Q. All these charts?

24 A. Yes, sir.

25 Q. But you didn't do those charts, did you?

M5OVSHE4

Hunziker - Cross

1 A. I didn't create them; I reviewed them for accuracy.

2 Q. And you reviewed the bank records?

3 A. Yes.

4 Q. And it's bank records from We Build the Wall?

5 A. Yes.

6 Q. Freedom Daily?

7 A. Yes.

8 Q. Ranch Property?

9 A. Yes.

10 Q. And Timothy Shea and Amanda Shea?

11 A. Yes.

12 Q. Okay. As part of your job you went through them
13 diligently; correct?

14 A. Yes.

15 Q. And you matched them up with the charts that you were given
16 by the government; correct?

17 A. Yes.

18 Q. Who created those charts, to your knowledge?

19 A. The prosecution team.

20 Q. The whole team or one individual?

21 A. I don't know who created it.

22 Q. Okay. So the prosecution team, nothing wrong with that,
23 they gave you these charts and you just matched them up to the
24 text messages and bank records; correct?

25 A. Yes, sir.

M5OVSHE4

Hunziker - Cross

1 Q. And you and I could agree that certain things were pulled
2 out of other exhibits and various other -- strike that.

3 The text message -- this would be one text message
4 pulled out, put on this transactional chart, and there would be
5 a lot of other text messages in there; correct?

6 A. Yes.

7 Q. And that's pretty much every single text message that's in
8 these charts. There's missing text messages from the charts,
9 right?

10 A. Not every single one. Some of the exhibits, the entire
11 text thread was included, but for many of the other ones it was
12 just a sample of the ones from that -- from the government
13 exhibits.

14 Q. And who made the decision to put -- it's true the
15 government -- the prosecution team, they are the ones who made
16 these charts, right?

17 A. Yes.

18 Q. Now, you went through a lot of testimony regarding Ranch
19 Property, right?

20 A. Yes.

21 Q. And you are an IRS agent?

22 A. I was.

23 Q. Okay. There's nothing wrong with incorporating in Wyoming
24 or Delaware or New York or Colorado; correct?

25 A. Correct.

M5OVSHE4

Hunziker - Cross

1 Q. And isn't it true in your experience as an IRS agent, an
2 agent today, a human being that does business, when you are
3 going to do business, you incorporate mostly, right?

4 A. I don't know if that's true. I know there's a lot of small
5 businesses -- my time at the IRS -- that were Schedule C
6 businesses; and those aren't incorporated, but I imagine many
7 businesses are incorporated, yes.

8 Q. Wouldn't -- a Schedule C business wouldn't be incorporated?

9 A. No, that's on your 1040.

10 Q. Okay.

11 A. So it's not an incorporated business.

12 Q. Are you aware there are over 30 million small businesses
13 that are incorporated in the United States?

14 A. No, I don't.

15 Q. So you would incorporate for various reasons, potentially
16 tax reasons, right?

17 A. Yes.

18 Q. Safe havens?

19 A. Yes.

20 Q. You would incorporate for liability, right?

21 A. Absolutely.

22 Q. You're providing security at the border wall; you may want
23 to incorporate for liability to protect your personal assets,
24 right?

25 A. Yes.

M5OVSHE4

Hunziker - Cross

1 Q. Okay. And there's nothing wrong with that, right?

2 A. There is not, no.

3 Q. And sometimes high-profile people in your experience as an
4 IRS agent, you know, they want to incorporate in Wyoming, they
5 want to incorporate in Missouri; correct?

6 MR. ROOS: Objection. He's just asking him to
7 speculate about why other people --

8 MR. MERINGOLO: They opened the door. He's an IRS
9 agent.

10 THE COURT: I'll allow the question.

11 Q. So they would want to incorporate Wyoming, Missouri,
12 Delaware, things that have favorable personal -- piercing the
13 corporate veil, right?

14 A. Yes.

15 THE COURT: I don't understand the question.

16 Rephrase that.

17 MR. MERINGOLO: Strike that.

18 Q. Sometimes you get sued, your corporation gets sued, you
19 want to protect your personal liability, right?

20 A. Yes.

21 Q. And that's one of the many reasons someone would
22 incorporate; correct?

23 A. Yes. You wouldn't get that benefit on a Schedule C
24 business.

25 Q. Like we just discussed.

M5OVSHE4

Hunziker - Cross

1 A. Right.

2 Q. So you would get a benefit of protection of your personal
3 liability from an LLC and an Inc., right?

4 A. Yes.

5 Q. And there's nothing wrong with that either, right?

6 A. Again, no.

7 Q. You just testified that Ranch Property got \$400,000 gross;
8 correct?

9 A. Yes. Sorry, within those 12 transactions.

10 Q. Right. From just We Build the Wall, right?

11 A. Yes.

12 Q. Okay. And you being a former IRS agent -- strike that.

13 Mr. Shea, when he gets paid for Ranch Property for
14 work, he can do whatever he wants with that money; correct?

15 A. When Ranch Property pays him?

16 Q. Yeah. If Ranch Property earns money, Mr. Shea can do
17 whatever he wants with that money; correct?

18 A. As the sole owner? Yeah, it's his business.

19 Q. Okay.

20 A. As long as he reports it on his taxes.

21 Q. As long as he reports it on his taxes.

22 And just for an example, if I grossed 400,000 -- let's
23 say Mr. Shea grossed 400,000, and he paid tax on 400,000. And
24 just round numbers -- because I'm not good at math -- his net was
25 200,000. If he wanted to give 200,000 to Brian Kolfage, if he

M5OVSHE4

Hunziker - Cross

1 wanted to go to Atlantic City, if he wanted to buy Bitcoin, if
2 he wanted to buy an Apple computer, he can do that?

3 MR. ROOS: I'm not sure I'm following the question
4 here.

5 Q. With the net proceeds that Mr. Shea, after tax dollars, he
6 can do whatever he wants; correct?

7 A. As the sole owner of that business, I think he has -- yeah,
8 he would have a lot of authority over what that business will
9 do with the money.

10 Q. Whatever he wants to do; correct?

11 A. I don't believe he had a board of directors to report to.

12 Q. He did not. So whatever he does with his money, as long as
13 he pays his taxes, right?

14 A. And it's legal.

15 Q. And it's legal. No, but after tax dollars, if I want to
16 buy Bitcoin with after-tax dollars, can I buy Bitcoin?

17 A. The only distinction I was making is if you want to buy
18 drugs with that money, then I would say -- that was the only
19 distinction I was making. But sure, yeah, if that's his
20 taxable income, yeah.

21 Q. Taxable income. If he wants to buy a social media list, he
22 could buy it; correct?

23 A. Yes.

24 Q. Okay. Now, back to Ranch Property with the income. Did
25 you match all the invoices he sent to We Build the Wall to

M5OVSHE4

Hunziker - Cross

1 bring that income in?

2 A. No.

3 Q. The government didn't provide you all the invoices for
4 Ranch Property to We Build the Wall?

5 A. I had access to a number of records. I don't recall seeing
6 all the invoices sent. It may have been somewhere in that --
7 in that document production. I just don't recall seeing it.

8 Q. Okay. But to your knowledge, as you sit here today, you
9 did not put a chart together about all the invoices; correct?

10 A. I didn't put any charts together, so that's correct.

11 Q. Okay. And you certainly didn't -- you reviewed some emails
12 from Tim Shea; correct?

13 A. Yes.

14 Q. And some of the emails you reviewed he was providing
15 security?

16 A. I don't know if I can say that.

17 Q. Okay. Would it refresh your recollection if he hired
18 former Navy SEALs to provide security at events for We Build
19 the Wall? Does that refresh your recollection?

20 MR. ROOS: Objection. Foundation.

21 THE COURT: Sustained. It's not in evidence.

22 Q. Well, is there any events that you reviewed that Tim Shea
23 was emailing that you can recall as you sit here today? Any
24 work on the email to verify the income? Did the government
25 provide -- strike that.

M5OVSHE4

Hunziker - Cross

1 Did the prosecution team provide you any emails of
2 which Mr. Shea was doing work, getting land or providing
3 security? Did they provide you any of those emails? Yes or
4 no, sir?

5 A. Land deals, no. And I don't believe security either. The
6 only reason I hesitate is because the -- okay.

7 Q. Sir, I'm not -- I'm not trying to get you. I'm just asking
8 you.

9 A. I just want to be complete, that's all.

10 Q. But there was certainly no chart of emails of Mr. Shea
11 doing work; correct?

12 A. No.

13 Q. And there was no videos or -- at the border that you've
14 seen Mr. Shea in; did they provide you any videos of Mr. Shea
15 at the border?

16 A. I didn't review any videos with Mr. Shea.

17 Q. Did they provide you -- put your IRS hat on. If you have a
18 credit card and you're paying -- and you're doing business,
19 Ranch Property is doing business traveling to the border and
20 you swipe your Amex card, that would be an expense; correct?

21 A. Are you saying is that a business expense?

22 Q. There's business expenses; correct?

23 A. If you're there for business, if you're being contracted by
24 We Build the Wall, and then you're down there for business,
25 there are some allowable expenses, absolutely.

M5OVSHE4

Hunziker - Cross

1 Q. And plane flights to the border to provide services for We
2 Build the Wall would be deductible; correct?

3 A. Yes, if you're contracted by We Build the Wall, sure.

4 Q. And maybe some meals would be deductible?

5 A. Partially, yes.

6 Q. Well, you're right. Sometimes it's 50 percent, but the
7 last two years has been 100 percent per meals, if you're aware?

8 A. I left about two years ago, so I'll take your word.

9 Q. So, well, we can agree you could write meals off, right?

10 A. At least some of it.

11 Q. Some of it. A rent-a-car, if you're going to go down to
12 the border?

13 A. Yes, it's part of your business, yes.

14 Q. Gas for the rent-a-car?

15 A. Okay.

16 Q. Maybe a notebook if you're going to take notes, right?

17 A. Sure.

18 Q. Did the government provide you any credit card statements
19 of my client?

20 A. I believe there were -- if they were there, they were
21 available, but they -- I didn't tie them out to anything in the
22 exhibit, so it was not something I focused my review on.

23 Q. That's fine. You have no personal knowledge of anything in
24 this case, right?

25 A. That's fair.

M5OVSHE4

Hunziker - Cross

1 Q. You're just here to go through the charts that the
2 government created, right?

3 A. Yes.

4 Q. And did the government ever create a chart of Ranch
5 Property or Tim Shea or Amanda Shea about their credit card
6 expenses over this period of time? Did they ever give you a
7 chart with that to review?

8 A. No, I don't think so.

9 Q. But if there were expenses for the business, it would be
10 deductible; correct?

11 A. If there were legitimate business expenses, then yes.

12 Q. Now, when you reviewed -- when you reviewed Freedom Daily's
13 bank account, you were aware that was Brian Kolfage's company,
14 right?

15 A. Yes, he was a signer on the account.

16 Q. Did they give you -- did the prosecutor give you the
17 corporate papers, to your knowledge?

18 A. I don't believe I saw the corporate papers, but I saw the
19 opening documents from the bank.

20 THE COURT: What do you mean by "opening documents"?

21 THE WITNESS: So when you go into a bank to open an
22 account, there's some documentation required by the bank; it's
23 know your client, where they also ask who can sign on this
24 account. And you'll ask those people to print their name and
25 actually sign their name so the bank can -- you know, if you

M5OVSHE4

Hunziker - Cross

1 write a check, they can, in theory, compare that signature to
2 what's on their records.

3 MR. MERINGOLO: Can we pull the government -- if the
4 government remembers, can we pull the exhibit up with the 13
5 transactions?

6 MR. ROOS: Twelve?

7 MR. MERINGOLO: Twelve transactions.

8 MR. ROOS: 902.

9 MR. MERINGOLO: What?

10 MR. ROOS: 902.

11 MR. MERINGOLO: 902. I'm not that good, everybody.

12 Q. You know Freedom Daily and Brian Kolfage was -- they
13 provided social media services for people, to your knowledge?

14 A. I saw some checks with the memo line saying social media
15 accounts.

16 Q. Okay.

17 A. I didn't look at any invoices if any services were
18 rendered, but I did see the checks with that --

19 Q. And it said social media accounts; correct?

20 A. Social media accounts is one of them, yup.

21 Q. Did you ever see a contract between my client and
22 Mr. Kolfage for 150,000 for a social media list from GoFundMe?

23 A. No.

24 Q. The government never provided you a contract between
25 Mr. Shea and Mr. Kolfage for 150,000 for social media accounts,

M5OVSHE4

Hunziker - Cross

1 lists or whatever people call it that do this?

2 A. I didn't see a contract, no.

3 Q. The government didn't show you that contract, right?

4 A. I didn't see it, no.

5 Q. Did you ever see the contract between We Build the Wall and
6 Ranch Property?

7 A. Contract?

8 Q. Contract between We Build the Wall and Ranch Property, have
9 you ever seen that contract?

10 A. No. I believe the only thing I saw was that invoice from
11 Ranch Property back to We Build the Wall.

12 Q. So the government didn't provide you the contract between
13 We Build the Wall and Ranch Property; is that correct?

14 A. Correct.

15 Q. So we're going to go through -- let's look at the number --
16 number three, okay, there's \$100,000 that -- from We Build the
17 Wall to Timothy Shea and Amanda Shea; correct?

18 A. Yes.

19 Q. And that's given 50,000 right to Freedom Daily, right?

20 A. Yes.

21 Q. Okay. Let's keep going. Let's look at the next one. And
22 five and six are 50,000 to Ranch Property, and you never saw
23 that invoice; correct? For the 50,000?

24 A. No, just text messages that we reviewed.

25 Q. Okay. And then it was \$25,000 right to Freedom Daily;

M5OVSHE4

Hunziker - Cross

1 correct?

2 A. Yes.

3 Q. Okay. Now you got number six was \$30,000, and then -- and
4 then Mr. Shea gave -- you're better at math than me. He gave,
5 I don't know, 60-something percent, 20,000 right to Freedom
6 Daily, right?

7 A. Two-thirds.

8 Q. Two-thirds. That's why you're there and I'm there. I'm
9 not doing taxes. We can forget about that.

10 And then let's go back. Let's keep going up. And we
11 have number eight, you got \$48,000. And he sends Freedom Daily
12 20,000; correct?

13 A. Yes, sir.

14 Q. And let's go one more time. And then you got three
15 transactions, 66,000. And then he writes a check to Freedom
16 Daily; then he writes a check to himself, which is wife and his
17 himself. There's nothing wrong with that, as long as they pay
18 taxes, right? It's his account; he's a sole owner; he can do
19 whatever he wants, right?

20 A. It's his business.

21 Q. Did you see any checks to any credit cards? If you don't
22 remember, don't worry.

23 A. I'm just trying to think back to the bank statements I
24 reviewed for -- are you talking about from the RPMM account or
25 from the Shea account?

M5OVSHE4

Hunziker - Cross

1 Q. Either one.

2 A. I don't recall.

3 Q. Don't worry. Then we have the last one of where Mr. Shea
4 gets around 57,000, and then he writes Mr. Kolfage 31,000;
5 correct?

6 A. In November, yeah.

7 Q. Then he writes himself a pay, 26,000. So the final number
8 you gave us was he grossed 400; Brian got 100, Freedom Daily
9 got 190,000, and the Sheas got 153,000; correct?

10 Approximately?

11 A. Brian Kolfage got -- yeah, it wasn't just the Freedom Daily
12 account.

13 Q. Right, right.

14 Now, sir, how many times did you meet with the
15 prosecutors regarding this?

16 A. I believe it was about five times.

17 Q. And you practiced the direct testimony that you just gave
18 today pretty much?

19 A. I reviewed the charts with them and they asked me questions
20 about the charts.

21 Q. They asked you questions; you gave them answers, right?

22 A. Yes.

23 Q. Did they prepare for this cross-examination? Did they
24 prepare you for cross?

25 A. For about 90 seconds.

M5OVSHE4

Hunziker - Cross

1 Q. Is it this crazy guy is going to get up here, he's going to
2 start yelling, right, something to that effect?

3 A. No, I don't think they said that.

4 Q. All right. Well, it's okay.

5 A. They are much too polite.

6 Q. They are very polite. But we can agree they didn't give
7 you a chart of the credit cards; they didn't give you the
8 contract between my client and Mr. Kolfage; and they didn't
9 give you the contract of Ranch Property and We Build the Wall.
10 We can agree with that, right?

11 A. I don't recall reviewing them.

12 Q. Okay. For the judge and the jury, did the government ever
13 tell you to look for bank records from Freedom Daily to the
14 Sheas? Did they ever ask you -- you reviewed the documents.
15 Did they ever ask you, We want to see money from Freedom Daily
16 to the Sheas? Did they ever ask you that? Yes or no, sir?

17 MR. ROOS: Objection.

18 What we're asking him doesn't matter.

19 THE COURT: Overruled.

20 Q. Did they ever ask you that, sir?

21 A. I was asked to review the charts for accuracy, so I mean as
22 far as --

23 Q. But you reviewed the bank records for Freedom Daily, right?

24 A. I tied out the bank records from the exhibits to Freedom
25 Daily.

M5OVSHE4

Hunziker - Cross

1 Q. Sir, respectfully, you testified about ten minutes ago that
2 you reviewed the bank records for Freedom Daily, sir?

3 A. I just want to be clear with what I said. With reviewing,
4 was I went to the exhibits, and on the transaction dates I
5 would make sure that that transaction dollar amount was there.
6 Now, through that review, sometimes I would -- I would see
7 other transactions, of course.

8 Q. Tell the jury how many transactions did you see from
9 Freedom Daily to the Sheas?

10 A. I don't -- I don't recall seeing any, but there may have
11 been some.

12 Q. If I tell you in the bank records there were many
13 transactions from Freedom Daily to the Sheas, you sit there and
14 you don't know that? Is that your testimony, sir?

15 A. I believe on a summary -- on a chart that I saw, I did see
16 Freedom Daily. I don't recall if it was going into RPMM or
17 into the Sheas' personal account. If you have something to
18 refresh my memory, I could take a look.

19 Q. You know what's great? This document is in evidence. Am I
20 right?

21 Government Exhibit 2000, we want to pull it up, Bates
22 numbers, for the government, 00258301.

23 I'm sorry. I'm sorry. This is the Sheas' bank
24 account. And we got transfers from Freedom Daily to the Sheas,
25 I gave the Bates stamp and it's in evidence. I want to put it

M5OVSHE4

Hunziker - Cross

1 on the screen.

2 Did you see this 20 --

3 MR. ROOS: Can we see that?

4 MR. MERINGOLO: Sure. If you want to pull it up on
5 the screen, that would be great.

6 MR. ROOS: This is for 2018.

7 MR. MERINGOLO: It's in evidence.

8 MR. ROOS: Sure.

9 BY MR. MERINGOLO:

10 Q. So I want you to see this bank record.

11 A. Sure.

12 Q. Does that refresh your recollection that what's in
13 evidence, Freedom Daily paid the Sheas on September 5th, 2018,
14 \$26,000?

15 A. On September 5th, there was an electronic deposit from
16 Freedom Daily into the Sheas' U.S. bank account for \$26,894.

17 Q. Okay. We should do our own -- okay. So you and I and the
18 government, what's in evidence is GX 20, we're going to
19 start -- GX 2000, I'm sorry, everybody. We're going to say on
20 September 5th, 2018, \$26,894 goes from Freedom Daily. I'm just
21 going to write FD. And I'm just going to write Sheas, if
22 that's okay.

23 October 22nd, 2018 statement, Bates stamp 00258283,
24 the Sheas bank account. I'm going to show you a transfer on
25 October 3rd from Freedom Daily to the Sheas. So that's a month

M5OVSHE4

Hunziker - Cross

1 later. We'll keep going.

2 Can you tell the jury how much money Freedom Daily,
3 Brian Kolfage's company, paid the Sheas?

4 A. It was wired for \$10,518 on October 3rd, 2018.

5 Q. Okay. Thank you.

6 So I'm going to write in our new chart, October 3rd,
7 2018, \$10,518.00 from Freedom Daily to the Sheas. And you
8 know, why don't we try to do this all at once.

9 I'm going to give you -- the next one is going to be
10 00258287, and it's a wire transfer from Freedom Daily to the
11 Sheas for \$13,469; and then 0025879, there's a wire transfer
12 from Freedom Daily to the Sheas for 15,700.

13 MR. ROOS: What are the dates?

14 MR. MERINGOLO: That's December 4th. And then --

15 MR. ROOS: What year?

16 MR. MERINGOLO: Of 2018. Then -- we'll get to '19.

17 Then January 18, 2019, 00258271 from Freedom Daily to
18 the Sheas for 3600. Then on March 5th, 2019, one transfer on
19 March 5th, 2019, from Freedom Daily to the Sheas, \$8,384.40.
20 And then January 7th -- June 7th, 2019, June 7th, 2019, from
21 Freedom Daily to the Sheas, 22,247.13.

22 Then on July 16th, 2019, from Freedom Daily to the
23 Sheas, \$21,162.44. Then on September 17th, 2019, from Freedom
24 Daily to the Sheas, \$5,299.90. And then in August, from
25 Freedom Daily to the Sheas, 10,000.

M5OVSHE4

Hunziker - Cross

1 And let me just confer to make sure I get the next
2 number right.

3 (Counsel conferred)

4 MR. ROOS: These are all in evidence. We'll stipulate
5 to them. But I don't know if there's a question.

6 I believe you.

7 MR. MERINGOLO: I'm not good -- I'm reading it to the
8 jury.

9 Q. So from Freedom Daily to the Sheas on August 11th, 2019,
10 50,000. I want you to just double-check that I'm right. If
11 you want to just read them off to me as you're on the stand.

12 A. Sure.

13 Q. Let's start from the top.

14 A. Okay. On November 2nd, \$13,469.

15 Q. 13,000 what?

16 A. 469.

17 Q. Okay.

18 A. 2018.

19 Again in 2018, December 4th, \$15,700.

20 Q. Okay.

21 A. On January 18th, 2019, 3600.

22 Q. Okay.

23 A. On March 5th, \$8,384.

24 Q. Okay. 2019, right?

25 A. 2019. These are all 2019 now.

M5OVSHE4

Hunziker - Cross

1 Q. Okay.

2 A. And June 7th, \$22,247.13.

3 Q. Repeat that, I'm sorry, sir?

4 A. \$22,247.13.

5 Q. Okay.

6 A. On July 16th, \$21,162.44.

7 Q. One more time. I'm not that good. 21,000 --

8 A. 21,162.

9 Q. Okay. July what, 16th?

10 A. July 16th.

11 Q. Okay.

12 A. September 17th, \$5,299.90.

13 Q. Okay.

14 A. August 10th, 2020.

15 Q. August 10, 2020?

16 A. Yes.

17 Q. Yes.

18 A. August 10th, 2020 is \$10,000 from Freedom Daily.

19 And then on August 11th, 50,000.

20 Q. August 11th, 2020 was 50,000, right?

21 A. Yes, 50,000.

22 Q. Okay.

23 MR. MERINGOLO: Do you have a sticker?

24 Your Honor, I'm going to mark this as Defense 1. And

25 I'll have the witness double-check all the numbers to make sure

M50VSHE4

Hunziker - Cross

1 I'm correct.

2 THE WITNESS: I'm sorry, did you give me September 5th
3 and October 3rd, those first two transactions?

4 THE COURT: From what year?

5 THE WITNESS: 2018. Sorry. I'll try to go quickly.

6 MR. MERINGOLO: We're going to do one more thing, if
7 it's okay with your Honor, and I'm not going to take much more
8 time. I'm going to need him to add this up, because it will be
9 a complete disaster if I add it up. And I can give him my
10 calculator, if you want.

11 THE COURT: That's fine.

12 A. Do you need an exact number or --

13 Q. I'm going to give you a calculator.

14 A. Okay.

15 Q. Because if I'm doing the numbers, we're going to have a
16 problem.

17 A. Approximately 187K.

18 THE COURT: And that covers what period?

19 THE WITNESS: That covers \$187,273. There might be
20 some cents.

21 Q. Don't worry about it.

22 A. Covers September 5th, 2018 through August 11th, 2020.

23 Q. Do you want to put that on the top? I'll give you a pen.

24 A. If you like.

25 Q. Just the time frame, timeline.

M5OVSH4

Hunziker - Redirect

1 MR. MERINGOLO: And I'll show the government this,
2 your Honor. I'd like to move this into evidence, Judge.

3 MR. ROOS: No objection.

4 THE COURT: It is admitted. What is it marked?

5 MR. MERINGOLO: It's marked Defense Exhibit 1. But
6 what was the number? We didn't put the final number there.

7 (Defendant's Exhibit 1 received in evidence)

8 MR. MERINGOLO: Your Honor, it's Defense Exhibit 1.

9 During this period of time, it's \$187,273 from Freedom
10 Daily to the Sheas.

11 No further questions.

12 THE COURT: Redirect?

13 MR. ROOS: Sure, just a brief redirect.

14 REDIRECT EXAMINATION

15 BY MR. ROOS:

16 Q. So these payments from Freedom Daily to the Sheas are from
17 September 2018 to August 2020, right?

18 A. Yes.

19 Q. And 60,000 of that total comes in August 2020, right?

20 A. Yes.

21 Q. Let me first ask you, when was the -- when were those text
22 messages you read about Winning Energy, when was that?

23 A. June 2020.

24 Q. Okay. And do you know what these payments were for?

25 A. No idea.

M5OVSHE4

Hunziker - Redirect

1 Q. Do you know if they were related to the social media
2 business that --

3 MR. MERINGOLO: Objection. He said he didn't know.

4 THE COURT: Overruled. You may answer.

5 Q. Do you know if they are related to the social media
6 business that the Sheas and Kolfage had?

7 A. I don't know what they are for.

8 Q. Do you know if they are related to Winning Energy?

9 A. No, sir.

10 Q. Now, do you know if this total, 187,000, was reported on
11 Tim Shea's taxes?

12 A. I never saw his tax returns.

13 Q. Okay. I'll give this back to you.

14 Let me ask a few questions about some of the other
15 things defense counsel asked you about. You were asked these
16 questions about, you know, sort of like cherry-picking text
17 messages into the charts. Do you remember those questions?

18 A. Yes.

19 Q. I just want to make it clear, if the jury wants to see any
20 of the text messages or the emails, are all of those in
21 evidence too?

22 A. Yes. As we discussed, on the right side, that GX number is
23 the source document. We pulled a number of those up.

24 Q. Okay. You were asked some hypothetical questions about
25 suing someone to get a loan back, right?

M5OVSHE4

Hunziker - Redirect

1 A. Yeah.

2 Q. Now, I think your testimony was that you weren't familiar
3 with any kind of lawsuit to get the money back; is that right?

4 A. Unaware of any lawsuit.

5 Q. Now, if somebody didn't know that a loan existed, would
6 they know to sue for it?

7 A. I imagine not, no.

8 Q. So if it's a secret loan, there's no lawsuit to be had,
9 right?

10 A. I doubt it.

11 Q. All right. You were asked about reasons why a person might
12 incorporate a business, do you remember those questions?

13 A. Yes, I do.

14 Q. And you were asked some questions about taxes and safe
15 havens, do you remember those questions?

16 A. Yes.

17 Q. Is one reason somebody could incorporate a business to
18 conceal a crime?

19 A. Yes.

20 Q. Now, you were asked some questions about invoices, do you
21 remember those?

22 A. Yeah.

23 Q. All right. And I think the questions had to do with
24 whether the government showed you some invoices?

25 A. Yes.

M5OVSHE4

Hunziker - Redirect

1 Q. I just want to ask you about sort of an assumption in that
2 question. Do you know if invoices even existed for some of
3 these transactions?

4 A. I have no idea if they exist.

5 Q. All right. And you didn't see any invoices on
6 cross-examination either, did you?

7 A. I was not shown any, no.

8 Q. You were also asked some questions about, you know,
9 somebody -- could you get reimbursement for meals and --

10 A. Gas.

11 Q. Gas, etc.

12 A. Legitimate business expenses, I remember.

13 Q. Okay. Do you know if Tim Shea incurred those business
14 expenses relating to We Build the Wall?

15 A. No, I was saying those are -- could be legitimate business
16 expenses. I don't know if they were incurred or not.

17 Q. Okay. On this question of invoices, you did look at some
18 invoices in connection with your direct testimony; is that
19 right?

20 A. The Vision Quest ones?

21 Q. Right. And those are in evidence, right?

22 A. Yes, we looked at it.

23 Q. And did you also review some invoices about drones?

24 A. I saw some in my review.

25 Q. Okay. All right. Well, let's bring up Government Exhibit

M5OVSHE4

Hunziker - Redirect

1 902 -- I'm sorry, 901. And do you see that first payment for
2 \$100,000?

3 A. On March 27th?

4 Q. Yeah. Did you ever see an invoice for that?

5 A. I don't believe so.

6 Q. Do you know if one exists?

7 A. I don't know if one exists.

8 Q. All right.

9 MR. ROOS: One second, your Honor.

10 (Counsel conferred)

11 Q. All right. You were asked a bunch of questions about, you
12 know, how a transaction -- how doing something as part of a
13 transaction could be legitimate, right?

14 A. Could be legitimate?

15 Q. Yes.

16 A. Yes.

17 Q. And defense counsel gave you some reasons why maybe
18 something could be legitimate, right?

19 A. Sure.

20 Q. To give you an example, I think defense counsel asked you
21 about spending your own money, right?

22 A. Yes.

23 Q. And said once you get your money, you can sort of spend it
24 for whatever you want. Do you remember that?

25 A. If it's your money, yes.

M5OVSHE4

Hunziker - Recross

1 Q. And I think you had sort of a caveat that you were trying
2 to make. What was that?

3 A. I believe it has to be -- if it's your business, then you
4 have to -- the business expenses have to be legitimate; and
5 then that money has to flow to you, and you have to report it
6 on your tax returns.

7 Q. All right. So you gave the example of even if it's your
8 money, you can't go by a bunch of -- do an illegal drug
9 transaction, right?

10 A. No, that would be money laundering.

11 Q. All right. And what about could you pay a kickback?

12 A. No, you couldn't do anything illegal with it. I mean, I
13 guess you could do something illegal with it. You shouldn't do
14 something illegal with it.

15 Q. Okay.

16 MR. ROOS: No further questions, your Honor.

17 THE COURT: Recross?

18 MR. MERINGOLO: Yes.

19 RE CROSS EXAMINATION

20 BY MR. MERINGOLO:

21 Q. You said -- I think you just pulled up that \$100,000
22 payment on March of 2019; correct?

23 A. March 27th.

24 Q. 27th. During the course of you being involved in this case
25 and reviewing Tim Shea's emails, did you ever come across an

M5OVSHE4

Hunziker - Recross

1 email where he was hiring a company, a respected security
2 company, with 18 Navy SEALs in Cincinnati around March of 2019?

3 A. I didn't see that email, no.

4 Q. Maybe it would refresh your recollection if you see it?

5 MR. ROOS: He said he'd never seen it.

6 A. I didn't see that email. That one I think I would
7 remember.

8 Q. Okay. So it's your -- do you remember any emails in March
9 of 2019 with Mr. Shea?

10 A. I have to double-check the timeline with the text messages,
11 but the ones I saw would be captured in the summary documents
12 on the exhibits 902 through 906.

13 Q. Okay. Well, maybe on March 27, 2019, do you remember
14 reviewing an email with Tim Shea and Foreman Mike at the border
15 who does the construction, who did the construction for the
16 wall, do you remember that email?

17 A. No.

18 Q. No? And that wouldn't refresh your recollection either,
19 right?

20 A. No, I didn't see it.

21 MR. MERINGOLO: Okay. Can we pull up the last
22 exhibit, the \$100,000 that came in to Ranch Property? I'd like
23 to see the date on that. March 27, 2019.

24 Q. So you reviewed -- you obviously reviewed that date, right,
25 that this chart that the government provided, and you reviewed

M5OVSHE4

Hunziker - Recross

1 and verified March 27, 2019; correct?

2 A. From the bank records, yes.

3 Q. And you don't -- the government didn't give you or you
4 didn't review an email between Ranch Property Management and
5 Foreman Mike to help build the final preparations of the border
6 wall? Are you sure, sir?

7 A. No, I didn't review that.

8 Q. And that wouldn't refresh your recollection, right?

9 A. I'm certain I didn't review that email.

10 Q. Are you sure the government didn't give you that?

11 MR. ROOS: Your Honor, asked and answered. This stuff
12 is not in evidence.

13 THE COURT: Sustained.

14 MR. MERINGOLO: One more, Judge.

15 Q. Did you ever review any emails between Foreman Mike, the
16 person who helped building the wall, and Tim Shea?

17 MR. ROOS: Objection.

18 THE COURT: Counsel, you cannot testify.

19 MR. MERINGOLO: I understand. I'm sorry.

20 Q. Did you ever review any emails between Tim Shea and someone
21 at the border?

22 A. No.

23 Q. Did you ever review any emails with Tim Shea and anyone who
24 was going to build the wall in New Mexico?

25 A. No.

M5OVSHE4

1 Q. Did you ever review any emails at anytime of Tim Shea
2 contacting landowners to buy their land at the southern border?

3 A. No.

4 Q. Did you ever review any emails of Tim Shea hiring a drone
5 company to help with a video at the southern border?

6 A. No.

7 MR. ROOS: Your Honor, I think we're kind of going
8 beyond the scope here.

9 THE COURT: I know. He'll wrap up very soon because
10 it's five minutes to five.

11 MR. MERINGOLO: I'll wrap up right now, Judge.

12 Thank you very much for the latitude.

13 THE COURT: All righty, then.

14 You may step out.

15 (Witness excused)

16 THE COURT: Members of the jury, we've come to the end
17 of our day. You'll return tomorrow. Tomorrow breakfast is at
18 8:15. By 8:45, you must be in 9B, because there's some forms
19 that I need you to fill out. So by 8:45, in room 9B. Now,
20 very soon thereafter, the clerk on my staff will bring you up
21 here to come into the courtroom. So I need everyone to be on
22 time.

23 Remember that you're not allowed to discuss the case
24 amongst yourselves or with anyone else. It's very tempting
25 when you start to hear testimony to start to chat about the

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1 case, but you can't do that. Don't permit anyone to discuss
2 the case in your presence. Have a good evening.

3 (Jury not present)

4 THE COURT: You may be seated.

5 How are we doing as far as pace?

6 MR. ROOS: So I think we're doing great, your Honor.
7 I think it's actually pretty likely the government is going to
8 rest in either the morning or midday on Thursday of this week.

9 THE COURT: And do you have a full day of witnesses
10 tomorrow?

11 MR. ROOS: We're going to fill the day tomorrow. At
12 midday we can certainly give your Honor an update of whether
13 we're moving even faster than that, such that we can even rest
14 at the end of the day tomorrow. My guess is that's not going
15 to be the case, or whether we think we're going to rest in like
16 the first hour, the first three hours of Thursday. But I think
17 we -- based on all the work we're able to do today, we're
18 moving at a pretty fast pace.

19 THE COURT: Okay. So then we would be returning on
20 Tuesday, and the defense would decide whether to put on a case.

21 MR. ROOS: I think we would ask, if we're done in
22 early part of Thursday, that the defense put on their case so
23 we can have all the evidence in and then have the weekend to do
24 the summations.

25 THE COURT: Does the defense feel they could put on

M5OVSHE4

1 the case in half a day?

2 MR. MERINGOLO: Judge, we have a number of -- we're
3 waiting for a number. We don't have any of our stipulations
4 signed.

5 MR. ROOS: We'll meet with the defense this afternoon
6 on their stipulations.

7 MR. MERINGOLO: What we're going to do, since the
8 opening we pulled a lot of emails that we believe we're going
9 to see if we can get -- we'll try to work tonight. It is what
10 it is, right, Judge? We'll try to get them all done. I don't
11 see it's a problem. You know, we'll have --

12 THE COURT: You'll cooperate. Okay.

13 So then I will expect the defense to be prepared to
14 start on Wednesday afternoon. And it could be that then on --
15 I'm sorry, Thursday afternoon. I'm sorry. Thursday afternoon.
16 Then on Tuesday, summations.

17 Anything else?

18 MR. MERINGOLO: No.

19 MR. ROOS: There's one other thing I just want to
20 note, and I may be totally misreading the situation. It looked
21 like to me that Juror No. 4, the gentleman in the turquoise
22 shirt, was commenting on exhibits to Juror 5, who at some point
23 I sort of noticed had kind of like waved him off. Your Honor
24 just gave an instruction about not talking about the case, so
25 my guess is that will hopefully solve it. I know sometimes

M5OVSHE4

1 jurors are interested and they want to engage with someone, but
2 it looked like perhaps Juror 5 wasn't interested in that, but I
3 don't really know.

4 THE COURT: I didn't observe that, but you've noted
5 it.

6 Okay. All right, then. So I will see you then
7 tomorrow morning at 9. Thank you. Have a good evening.

8 (Adjourned to May 25, 2022 at 9 o'clock a.m.)
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